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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 24 SEPTEMBER 2010

AT 9.45AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court

THE COMMISSIONER: Mr Payne.

MR PAYNE: I call Barry McClure.

MR STEVENSON: I seek leave to appear for Mr McClure and no section 38 order is required, Commissioner.

10 THE COMMISSIONER: Yes, thank you. Mr McClure, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR McCLURE: Affirm, thank you.

<BARRY JAMES McCLURE, affirmed

[9.45am]

THE COMMISSIONER: Mr Payne.

MR PAYNE: Mr McClure, what is your full name?---Barry James McClure.

10 And you're employed by Sydney Water in its Internal Audit department?  
---Yes.

For how long have you been employed within the Internal Audit department?---About 32 years.

Has that been your only job or were you otherwise employed prior to coming to Internal Audit within Sydney Water?---I was three years in another years before Internal Audit.

20 Within Sydney Water?---Yes.

And you came straight from school to Sydney Water did you?---Yes.

In those 32 years have you continuously been employed within Internal Audit or have you been seconded to other areas of the Sydney Water business in that time?---Only in Internal Audit.

I see. You've prepared a document in response to some questions which were asked in a notice from the Commission. Correct?---Yes.

30 Have you had a chance to look at that document recently?---Yes.

Can I show you a document. Is that a document you prepared in answer to the questions from this Commission under a formal notice?---Yes.

Commissioner, I tender that document.

THE COMMISSIONER: A document containing information provided by Mr Barry McClure is Exhibit P159.

40

**#EXHIBIT P159 - DOCUMENT CONTAINING INFORMATION PROVIDED BY MR B MCCLURE**

In addition to providing the information in that statement as you understand it the Internal Audit department of Sydney Water was responsible for producing the documents required by this Commission for the purposes of the inquiry. Do you agree?---Yes.

Were you involved in that process of obtaining documents to provide to this Commission?---Yes.

Can I show you a document which has been handed to me this morning by Mr Stevenson of Sydney Water.

THE COMMISSIONER: Mr Stevenson for Sydney Water and not Mr Stevenson of Sydney Water.

10

MR PAYNE: Thank you. That's a document I'd ask you to assume that was handed to me this morning apparently a document prepared by a Mr Price. Do you know who he is?---I do.

From the Urban Growth department within Sydney Water to a Mr Saxby, at that time the head I think of Mr Price's department within Urban Growth. Do you agree?---Yes.

20

It appears to be an electronic communication to Mr Saxby of a complaint of corruption in relation to a John Buckley. You pick that up in the second paragraph?---Yes.

And you agree that the allegation is to be that a constructor told Mr Farrell a water service coordinator that an order for a Corrective Action Request to be closed off he had to pay John Buckley money namely \$100?---Yes.

Prior to me showing you this document were you aware of this allegation, Mr McClure?---No.

30

This document wasn't provided to the Commission under the notice which called for all records concerning allegations about Mr Buckley. You agree? ---Yes.

Can you give the Commission any reason why that was, this document was missed in the production which came to the Commission?---I don't recall asking Mr Saxby for documents.

I see. You were responsible for obtaining documents to be produced to the Commission under the notice?---Yes.

40

And you went to various people within Sydney Water and asked them to provide you with documents so you could send them on to the Commission?---As best as I can recollect, checked in internal audit and also as best as I can recollect spoke to maintenance. I don't recall speaking to Mr Saxby for documents.

I see. When you say you spoke to maintenance, who were the, who was the person or persons you spoke to within maintenance?---As best as I can recall I believe it was Mr De Rooy.

Who's the relatively recent head of maintenance?---Yes.

All right. And did you talk to anybody else in maintenance about obtaining documents?---I don't recall that.

And did Mr De Rooy come back to you directly or did he, to your observation appoint other people within maintenance to look for documents and report back to you?---I can't recall. To the best of my recollection I  
10 believe it was Mr De Rooy.

I see. So you left it to him to do whatever he had to do within maintenance to gather documents about any allegation concerning Mr Buckley and to come back to you?---Yes.

And just so we're clear Mr McClure, you were the person responsible for gathering information within Sydney Water to respond to the Commission's notice?---Yes.

20 Can you give the Commissioner any explanation for why you didn't ask Mr Saxby for documents within Urban Growth?---From what I can recall, I was working on the assumption that if there were complaints in relation to Mr Buckley, they would've been provided to the area that managed Mr Buckley.

And just so we're clear you made no inquiries of Urban Growth about any document which might respond to the notices from the Commission?---Not that I can recall.

30 Mr McClure, I want to be fair to you, but you've sat here waiting to give evidence patiently for many days now haven't you?---Yes.

You've seen me ask questions of a number of senior Urban Growth officers. Correct?---Yes.

You've heard me put questions to them about documents in the absence of documents from Urban Growth?---I can't recall that.

40 Well were you here when there was an exchange between Mr Price and I about this document I've put in front of you?---Oh, yes.

And were you here when I crossed examined Mr Saxby about this matter? ---Yes.

Did it occur to you that there had been a fundamental failure at that point by Sydney Water in responding to the notices from this Commission?---Yes. And what I did is, I have issued an email to Urban Growth and also to Civil Delivery asking them to check as a matter of urgency for any other

documents that might relate to complaints or investigations into Mr Buckley.

What was the date of this email?---It went yesterday.

Did you tell your lawyers about it?---I copied it to my lawyers.

Mr McClure, do you accept that your response to the Commission's notices was inadequate?---I accept that.

10

And the only explanation you offer the Commissioner is you thought Urban Growth, as they weren't managing Mr Buckley or Mr Kane or Mr Funovski would not have documents about the complaints?---Well, they would refer those documents to, to the area that was responsible for managing them, which was Maintenance.

20

You understood, I take it when you were tasked with obtaining documents to respond to this Commission's notice that they weren't limited in any way to any one part of Sydney Water?---Yes. But I also understood that in order that the investigation be kept confidential that, that request wouldn't go too wide or open.

So it was part of your thinking in not asking Urban Growth that documents about complaints about Mr Buckley that, that confidentiality was more important than responding properly to the Commission's notice. Is that what you say?---Again, I was working on the assumption that if there were complaints or issues they would've been provided to, to the relevant management.

30

Commissioner, can I tender this document at this stage.

THE COMMISSIONER: Yes. Copy of an email, this is an email is it or is it a letter?

MR PAYNE: As I understand it it's an attachment to an email which you pick up from the second page.

THE COMMISSIONER: All right. Copy of an attachment to an email dated 6 June, 2005, is that - - -

40

MR PAYNE: Yes, yes, Commissioner.

THE COMMISSIONER: Is that the email dated 6 June or the attachment or both?

MR PAYNE: I think both, Commissioner.

THE COMMISSIONER: Both, both dated 6 June, 2005, the attachment is that an email or a letter?

MR PAYNE: I understand that to be the properties box which is a Microsoft word document which shows when this document, being the attachment was created, namely 10.00pm on Monday, 6 June, 2005.

THE COMMISSIONER: All right. The attachment being an electronic communication then is it?

10

MR PAYNE: I think it's an electronic record rather than communication.

THE COMMISSIONER: Being an electronic, the Dear Paul, is an email isn't it? I mean the Dear Paul document on 6 June is what?

MR PAYNE: Yes, thank you, Commissioner. It is a letter, it's a properties box about the recreation of the letter. So it's, it's a kept electronically a copy of this letter and that's what the second page is.

20 THE COMMISSIONER: Well, I'm trying just to describe this Exhibit. It's a copy of an attachment to, it's not a copy of an attachment to an email?

MR PAYNE: I'm instructed - - -

THE COMMISSIONER: Right. Can I start again, what is it?

MR PAYNE: A letter from Mr Price to Mr Saxby dated 6 June, 2005 together with the electronic record of its creation.

30 THE COMMISSIONER: So P160 is a letter from Mr Price to Mr Saxby of 6 June, 2005 together with the electronic record of its creation.

**#EXHIBIT P160 - LETTER FROM MR PRICE TO MR SAXBY  
DATED 6 JUNE 2005 TOGETHER WITH THE ELECTRONIC  
RECORD OF ITS CREATION**

40 MR PAYNE: Thank you. Mr McClure, you were responsible for obtaining this document P160?---The one that's just, no.

When was it brought to your attention that this letter had been located?  
---When you handed it to me. I understand yesterday that the lawyer mentioned that a letter had been found, but this is the first time I've seen it.

The lawyer being who?---I believe it was James Millar.

I see. And did Mr Millar tell you that other documents had been found containing complaints about Mr Buckley?---No.

This email that you sent yesterday, was that before or after you had communication with the lawyer?---It was afterwards.

And what did it say?---It said as a matter of urgency please can you check to see if you have any records of complaints or investigation into complaints regarding Mr Buckley.

10

Mr McClure, again you were present when Mr Saxby was giving his evidence?---Correct.

And you're aware of what he said?---Correct.

20

You know that he has given evidence that he told you he's moved the date from 2000 to 2002 back to 1998 to 1999 and that he told you in terms that there was a complaint of corruption he'd received from two people and that he passed that complaint on to you for investigation at that time. Do you remember that evidence?---I remember him, the evidence in terms of complaints in '98 and '99.

Being complaints about corruption and Mr Buckley which he'd raised with you?---Yes.

Can I ask you firstly what, if anything, do you recollect about being told about those complaints at that time?---I have no recollection of being told of those complaints at the time.

30

Have you searched for records of anything you were told or anything you did in relation to such complaints at that time and subsequently?---Yes.

And what did you find?---I found no, no record of that complaint.

Do you deny that Mr Saxby passed on to you allegations of corruption about Mr Buckley in '98 or '99?---I can't deny what I don't recall, I do not recall.

40

What was your practice and tell me if it changed over time, what was your practice in relation to complaints of corruption that were made to you in 1998 and 1999 and subsequently?---Normal practice back in 1998, '99 would've been to alert the manager of the time with Internal Audit.

Yes?---And then it would've been back in '98, '99 we had a separate, within Internal Audit a separate investigations area and it would've been in terms of the normal practice to refer the matter to that area.

Were records as you understand it made of complaints of corruption received by Internal Audit in '98 and '99?---There were.

Are they still accessible?---They're not.

Why not?---I understand there was an investigation of database in place and I understand that that database has been removed.

What does that mean?---Well, it's, it's been deleted.

When did that happen?---I'm not sure when it happened.

10

You've been in Internal Audit right throughout this period?---Yes.

Who caused the investigations database containing allegations and investigations of corrupt conduct within Sydney Water to be deleted?---I understand it was Mr Sesel.

I see. And about what time did Mr Sesel give this direction?---I'm not sure when he gave the direction to delete the database. I wasn't involved in the actual deletion of the database.

20

If we wanted to look for records of investigations in relation to allegations of corruption within Sydney Water how far back would those records extend to your knowledge?---As best as I can recall they would go back to July 2001.

I see. And everything prior to that is deleted?---Yes.

Was it archived electronically anywhere?---I don't know.

30 Well, you told me before it was deleted?---Well, I understand it was deleted.

Well, you were responsible at least in part for responding to notices from this Commission about allegations and investigations of corruption, was the deletion of this database brought forward to the Commission as part of the response to the notice?---No.

Was it a deliberate decision to keep that matter from the Commission?---No.

40 Did you take the decision not to tell the Commission about this deletion in any response to a notice?---I only became aware of the deletion of the database very recently.

When?---Probably within the last three weeks.

When did you first learn that Mr Saxby provided a statement to this Commission saying that he had told you in terms about two allegations of corruption concerning Mr Buckley?---As far as I'm aware it was from the Commission. When Mr Saxby spoke to me and brought forward the

allegation that resulted in the investigation of Mr Buckley he did mention at that meeting that a matter had been referred to me. I initially thought he was talking about Internal Audit but that a matter had been referred to me but was not specific.

So just so we're clear. That's the Joseph Nasrallah tape we're talking about?---Yes.

10 Which comes from Mr Pascoe to somebody in Urban Growth?---Yes, I understand Mr Hammond - - -

Who then passes it up the line in Urban Growth?---Yes.

Gives it to you?---It went to Mr Saxby and Mr Saxby came to me.

So passes it up the line, Mr Hammond, Mr Saxby both in Urban Growth? ---Yes.

20 Then to you?---Yes.

Then you passed that on to the Commission and here we are?---Yes.

I understand all of that. That being the background, Mr McClure, what was your thought process when you subsequently received notices from this Commission about complaints about Mr Buckley to not think to ask Urban Growth?---Again I was working on the assumption that if there were issues, complaints they would've either come from Internal Audit or they would've been referred to Maintenance.

30 But you just told me that when this Joseph Nasrallah tape was handed to you by Mr Saxby he refers in terms to a complaint he had passed on to you in the past about Mr Buckley?---That's correct. And I asked him what that was about.

40 What did he say?---In the meeting I sought clarification when he, he said, Look, this has come up before this sort of thing, it's been reported to, to you. I sought clarification to say, By me are you referring to me personally or to Internal Audit? He was of the view it was to me and at that meeting I, I indicated I had no idea what he was referring to.

Can I ask again, Mr McClure, in those circumstances how could you possibly have formed the view that you could leave Urban Growth out of the places you make inquiries about complaints about Mr Buckley?---Again I was working on the assumption that if there's a complaint as happened in this case, Mr Saxby brought it to Internal Audit or if it was a related matter it would be referred to his, to Mr Buckley's management.

So you didn't know that if there were Internal Audit records of it they'd been deleted at the time you answered the notice to this Commission?---No.

And although you'd been told in terms by Mr Saxby from Urban Growth that he told you personally that allegations of corruption about Mr Buckley it didn't cross your mind to make an inquiry about whether there was any record in Urban Growth of those matters?---No.

10 Mr McClure, I want to be fair to you but that explanation rather suggests doesn't it that you took a deliberate decision not to ask Urban Growth about this matter because you were worried about your own position?---No.

You must've been, you tell the Commission you were surprised when you were told about allegations of corruption being reported to you?--- Yes.

20 What steps did you take to find out what on earth Mr Saxby was on about? ---Well, I did ask him in terms of what are you speaking, what are you saying, what are you talking about? But he was very vague and I asked was it given to me and the discussion went nowhere, he didn't, he didn't respond to that and so we moved then onto the allegation that he'd brought to my attention.

The document I showed you at the outset, that you, that you personally responded to the Commission's notice, that's an official notice asking you to respond to matters including matters about complaints about Mr Buckley, do you remember that?---Yes.

30 Exhibit P159. You don't say a word about Mr Saxby in this conversation and the complaint that was earlier referred to you on his explanation in that document do you?--I had no recollection of that complaint.

So the fact that you'd been told by a senior man in urban growth that a complaint had been referred to you and that that was his recollection and that it was you personally, they're all matters that you chose not to include in the response to the Commission?---I, that was an oversight on my part.

Mr McClure, I'm afraid I need to put to you that that's not true?---It is true.

40 It's a pretty remarkable oversight, isn't it, Mr McClure?---Only because when, when I asked Mr Saxby for details there was no details.

And then you get a notice from the Commission saying tell us everything about complaints about Mr Buckley and you don't mention that matter? ---That's correct.

What so you, you, you made an executive decision that what Mr Saxby was saying must be untrue because you couldn't find any records of it in internal

audit?---No, no, it was just purely an oversight. I, once, once that conversation happened we moved on.

(not transcribable)?---I did.

Can I ask you about the complaint made by Odelia Potts to Sydney Water, first at the end of 2008 and again at the beginning of February 2009?---Yes.

10 When did you first become aware of that complaint?---As best as I can recall it was, in terms of the details of the complaint it was after I'd, I'd received the complaint regarding Mr Buckley.

How many people were there within internal audit in late 2008 and early 2009 who had broadly speaking responsibility for investigations of corruption?---Mr David McClure was primarily responsible for investigations. I sometimes carry out investigations. Mr Sesel sometimes carries out investigations.

20 So within internal audit there's the three of you and of the there of you Mr David McClure is the person who has been primarily responsible for investigations of corruption within Sydney Water?---Yes.

And you tell the Commissioner that there was no discussion whatever about this complaint of corruption?---Not that I can recall.

Where you here when Mr David McClure gave his evidence?---I was.

30 Do you remember him saying that although, and I think in fairness to you he doesn't say he spoke to you immediately at the time about the complaint, he says that a decision was taken by internal audit because of Ms Potts' complaint to, to ramp up training in relation to, to fraud and corruption issues, do you remember that evidence?---I do, yes, I believe that was in the context of developing the audit programme.

And you had a discussion with him at that time about ramping up training as a result of Ms Potts' complaint, didn't you?---No, I cannot recall that.

40 So just to be fair to you, you remember do you a discussion with Mr David McClure about ramping up training in relation to fraud and corruption issues?---I don't specifically remember that. In terms of the audit programme Mr David McClure's, he's primarily the one who puts together the corruption prevention side of the programme.

So you tell the Commissioner that you weren't involved in, in consideration of the Potts' complaint at any time prior to receiving, I'll call it the Yousef Nasrallah tape-recording?---Not that I can recall.

As you understand Sydney Water's internal policies and practices, having now seen the complaint, was it in accordance with Sydney Water's policy and practice to not refer the Potts complaint to this Commission?---No.

It was against practice, is that what you say?---Well, it was against what I believe should have happened.

Is that, is what you believe should have happened written down anywhere? ---No, not that I know of.

10

Do you accept that it might be a good idea that it should be?---Well, we have the, the ICAC guidelines and my view is based on what the guidelines say in terms of when matters should be reported.

20

I see. And do you agree that it might be a good idea to have an internal Sydney Water document to make clear to absolutely everyone the circumstances in which complaints of corruption should be referred, first to internal audit and secondly by internal audit to this Commission?---There are documents that set that out. I would, in my opinion they do probably need clarification, particularly in terms of what constitutes reasonable grounds.

Yes. But you've been present in the Commission when there's been a good deal of evidence by senior officers of urban growth as you agreed with me before and to summarise some of that evidence, although the nuances were different many believed that Sydney Water's internal policies were such that it was only written complaints of corruption which should be forwarded to internal audit, do you remember evidence to that effect?---Yes.

30

Is there any such policy or practice within Sydney Water?---No.

Do you agree that regardless of the training that internal auditors conducted over the years with various aspects of the business, that the evidence before this Commission would indicate that the message that you've just described to me, that all complaints of corruption be referred to internal audit hasn't got through?---Yes and I would suggest also it's not just reports to internal audit but they can also be reported directly to the ICAC.

40

I quite understand, I'll ask you about that. Do you agree that that message you've just described to me, at least on the evidence that you've heard and read about before this Commission hasn't got through to senior levels within Sydney Water?---Certainly in terms of the discussion of, with urban growth I would say yes.

A number of pretty senior officers within Sydney Water have sat where you're sitting now and said things to that effect, do you agree?---Yes.

And what steps are planned as you understand it by internal audit to redress what appears to be on your evidence a misunderstanding of Sydney Water's policies and practices?---My understanding would be that in terms of our corruption prevention work that we make it very clear in terms of reporting and by using the word reporting we're not talking of written reports, verbal and also I understand that we're moving towards having an online tutorial which will be compulsory for all staff covering business ethics and I would offer the opinion that that needs to be made clear in that tutorial.

10 Are you involved in preparation of the materials you've just described for me?---I'm not totally involved in that.

Who's responsible for that?---I would understand it to be Mr Sesel and probably David McClure.

And when you understand that these initiatives are going to come on line if I can put it that way?---I'm not aware of the, the online training, in terms of a deadline. I know it's, it's being talked about. I'm not sure of a timeframe as to when that will come on.

20

Within, I'll start again. You're also aware of evidence before this Commission I take it from, if I can call them the provider group, namely accredited constructors, water services coordinators, developers and so on, to the effect that the communication at least of Sydney Water's policies and practices with regards to gifts and bribes has not been ideal to put it neutrally?---Yes, I would agree.

30 What steps are in train within internal audit as you understand it to address that problem?---My understanding is we've commenced having forums where industry groups, major contractors are invited to attend where Sydney Water's ethics and values are covered, the requirements in terms of providing gifts and benefits and also who to contact if bribery and corruption or inappropriate behaviour is happening.

And I take it you accept that in terms of complaints made to Sydney Water it's legitimate for that provider group to be concerned about possible reprisals as a result of any complaint?---That's correct.

40 What steps are in train within internal audit as you understand it to address those concerns and to make sure that consciously or unconsciously there is no reprisal against the person that's made a complaint about corruption? ---My understanding is certainly with the industry forums that will be made very clear. Also with, on Sydney Water's website that's probably something that could be included and particularly where we advertise the, the fraud hotline jut to give confidence that any allegation will be treated seriously.

THE COMMISSIONER: But are you aware of any steps that will be taken to monitor compliance with such a policy?---I'm not - - -

It's one thing to publish the policy, it's another thing to comply with it?---I guess that's where perhaps the fraud hotline would come in because if you are then getting reports of reprisals or non-compliance, it would then be picked up with that and followed up.

10 And shouldn't the people who are in a position to take reprisal action be trained in what's legitimate and what is not?---I would, I would accept that, Commissioner, yes.

MR PAYNE: And is it planned that internal audit will have any role in overseeing, I'll put it broadly, disciplinary action against any person who may have been involved in making a complaint of corruption?---I'm not aware of that.

20 Do you agree that that would be a good idea?---I'm not sure if internal audit would have the oversight, normally disciplinary matters are dealt with by our HR area. It might be matter of making sure that the matter is referred to HR.

Well in terms of, you know, you're going to publicise to the world there will be no reprisals?---Yes.

30 You've agreed with me that that's a good idea. What are you going to do about making sure that that doesn't happen?---There could be several ways of doing it, as I said with the fraud hotline. So if it does happen and someone reports it, then that would definitely need to be followed up. I guess another way that it could be done is via confidential surveys that are sent out to your suppliers to, for them to identify if there has been reprisals and to follow that up. And also with the industry forums to just get that message out.

40 That's a complaint based approach. What I'm suggesting to you is it would be desirable that steps be taken so that those managers, senior managers involved in the future in potential or considering potential disciplinary action against external whistleblowers know that what you have promised i.e., no reprisal is the fact?---I accept that.

And I suggest to you it would be a sensible idea to have somebody senior within Sydney Water to monitor that to make sure there is no conscious victimisation. Do you agree?---I agree. It's just a (not transcribable) where that information would become known. That's why I think the fraud hotline and the forums and also the surveys would be the way of perhaps doing that.

Well, that's the reactive way. What I'm suggesting to you is that Sydney Water should be doing something proactive to make sure that these promises you're making to the world are true?---Yes.

Do you agree with me?---Yes.

10 And you said to me a moment ago rather than internal audit monitoring that, HR would be better. Why is that?---Now, internal audit would monitor the compliance with that in terms of any disciplinary action that was taken in terms of a Sydney Water manager who, who may have - - -

I see?--- - - - breached that. That's what I was talking about.

We're at cross purposes. An external provider, let's say it's a water service coordinator has made a complaint of corruption to you and it's been dealt with one way or the other. So that's the hypothesis I'm putting to you. You're nodding, you're agreeing, you understand?---Yes.

20 In that circumstance as you understand it, there are contractual relations between Sydney Water and that water service coordinator?---Yes.

What you're telling me is that steps have been taken to promise to the world that as a result of that complaint, there will be no victimisation of that water service coordinator?---Yes.

You agree that victimisation can be both conscious in the sense that somebody sets out to get somebody for making a complaint. Agree?---Yes.

30 And much more subtle discrimination can occur because people responsible within Sydney Water and have heard about the complaint think that complainant is a troublemaker. Correct?---Correct.

40 And that's a very serious matter that you on behalf of internal audit would take, would take seriously, I'll start again. Do you agree with me that in their hypothesis that I have put to you if disciplinary action by which I mean Sydney Water taking action against the external provider as a result of this more subtle or unconscious influence of getting rid of the troublemaker (not transcribable) that would be a very serious matter. You would agree? ---Absolutely, yes.

What steps do you think should be taken to prevent this subtle or unconscious forms of discrimination against external suppliers?---Well, I guess it would have to start firstly with our own staff, our contract managers in terms of clearly making it, sorry, very clear to them of what their role and responsibilities are and their obligations in relation to responding to that. And also so that would involve training, it would also identify to them what action could be taken in terms of our employees if they breach that. But it's

also getting that message to our suppliers as well. And also providing them with an avenue as to who to contact if they feel it's been breached.

And in terms of the first thing, which is the communication to your staff, do you agree with me that internal audit should have a role in communicating Sydney Water's views about this more subtle or unconscious discrimination against external suppliers?---Yes, I would see, we would be involved together with our procurement area. We would do it together.

10 Are any steps in train to create such training and to roll it out across the relevant Sydney Water workforce as yet?---Not that I'm aware of.

I take it from what you've told me that at least from your point of view you would regard that training and approach by internal audit as highly desirable?---Yes.

Is there any reason it couldn't be done?---No.

20 Can I ask you a general question about these inspectors, Mr Buckley, Funovski and Kane we've heard evidence about. But more generally, prior to receiving Yousef Nasrallah recording, leaving to one side what Mr Saxby says he told you. Had you heard rumours of complaints about bribery and a tipping culture within the inspectors?---I can't recall hearing rumours about bribery, certainly in relation to Mr Buckley and the comments about him being pedantic, a stickler for detail, contractors raising issues with CARs, yes, that had been raised.

30 As you understand it there was no effective check or balance on the inspectors in terms of these CARs they were issuing. Do you agree?---My understanding was that the Urban Growth area had auditors who were conducting process audits and quality audits, safety audits. And my understanding was that in relation to Mr Buckley's CARs, they had been reviewed by that group which is independent of the, of the Civil Delivery area. That's, that's how I understand that, you know, a review had happened.

40 When did you hear about that review?---I understand it may have been in 2007 or 2009, I'm not quite sure. It was one of the instances where Mr Buckley had raised allegations about contractors.

Assaulting him?---Yes. Or threatening, one was a threat and the other one was assault.

Did it occur to you that in such a circumstance there might be more to it so far as Mr Buckley's involvement was concerned?---I guess that's, that's in terms of the flipside where the comment was made, well, the CARs have been reviewed and found to be appropriate, that, that, that seemed to address that issue. I cannot recall any comment about him taking bribes.

THE COMMISSIONER: You didn't hear any general rumours of corruption not just relating to Mr Buckley or not even relating to him at all?  
---No.

You never heard any rumour that there might be inspectors, PIAS inspectors or other inspectors who were taking bribes?---No.

10 There is evidence that other members of the Sydney Water workforce did hear those rumours. Can you explain why it is that the audit section didn't?  
---No, Commissioner, I don't know.

MR PAYNE: You accept that that state of affairs is quite unsatisfactory, Mr McClure?---Yes, yes, the matters should've been referred to Internal Audit or to the ICAC.

20 And exactly the fact to what we spoke about at the outset there's going to be a major change so far as you're concerned, the internal culture within Sydney Water and there's going to be strong communication about corruption matters being reported first to Internal Audit and also directly to the ICAC?---Yes.

And in terms of clarity I think you raised with me at the outset clarity of such allegations you don't regard writing is an essential prerequisite for passing it on?---No.

30 What are the essential prerequisites for passing an allegation of corruption along?---My understand is if there's reasonable grounds that corruption has or may have occurred and, and reasonable grounds meaning there's a real possibility that it's happened it's making that clear to our staff.

In terms of this real possibility test where's this come from?---I understand that might've come from the ICAC's guidelines. I guess the other criteria could be that it tends to show which is I think from the protected disclosures.

It tends to show is that this is a much lower test you'd agree with me?  
---Yes.

40 Do you understand that there are going to be any steps taken by Sydney Water to promulgate before this Commission some sort of test for referral?  
---I would see that would be Internal Audit as part of our corruption prevention work and also down the track with the, the online tutorial, that sort of information needs to be provided.

THE COMMISSIONER: Mr McClure, on one view Sydney Water should have some means of investigating any allegation of corruption whether it's hearsay or oral no matter how flimsy it appears to be. On that view there

should be a suitably qualified person or persons who should assess it. Is that reasonably practicable?---Yes, it is, I guess it's, it's, it's a practicality thing in terms of how many of, of these issues or complaints might be raised but yes, there should be an area that, that staff can go to if they are concerned or contractors as well.

Yes?---Yes.

10 Especially when one understands that the culture of the industry is such that the contractors and plumbers are very nervous about referring complaints?  
---I, I accept that, I guess that's where the fraud hotline comes in, at the moment it's in-house, I understand there's moves of, of putting it outside of Sydney Water just to give that added assurance that if you want to raise a complaint it's, it's not going to go directly to Sydney Water.

20 And really what I'm getting at is that instead of putting the onus on the complainant to provide the evidence why shouldn't Sydney Water have some mechanism to assess where their evidence might be obtained by itself?---Yes, I accept that. What we perhaps need is an internal complaint system as well.

Well, all I can say is that from the experience of this Commission if we refused to investigate complaints unless the complainant provided us with evidence we would have no work to do. So I don't see why that's different, should be different with Sydney Water?---Yes, I accept that.

30 MR PAYNE: Just to take up the Commissioner's point. You've heard a whole lot of evidence from various people about this concept of hearsay complaints?---Yes.

I take it that at least so far as you're aware there is no Sydney Water policy which would inhibit or forbid in any way the passing on of a complaint because a view was taken that it was "hearsay"?---No, there's nothing to stop that.

And indeed they would be the very sort of things that you'd should be passed on. Do you agree?---Yes.

40 Are steps going to be taken to communicate effectively with staff that whatever they think about some sort of hearsay rule that's not Sydney Water's policy or practice?---I would see that being built in to initially Internal Audit's education program and also with the, the online tutorial.

Would you agree with me it would make sense rather than try and have a fine legal definition of the precise standard of proof involved in an allegation of corruption that if anything is said which makes an employee think that corruption is being stated or hinted at in a communication with another staff member or somebody external that you really know about it?

---Yes.

And you agree that it would've been helpful to say the least if Internal Audit had a record of what appears to be a litany of complaints of one kind or another about corruption and Mr Buckley going back at least 12 years?

---Either Internal Audit or alternatively if, if when in Sydney Water there was, was a mechanism for that information to be, to be accessed.

10 I think is what you're suggesting, picking up what the Commissioner said that perhaps there needs to be some new part of Sydney Water dealing with this matter?---Yes.

And is that because looking back, I know it's in hindsight, you think Internal Audit's response to what appears to be evidence widespread dissatisfaction at least in some areas of Sydney Water has been inadequate?

---We just did not know about it so, yes, we need to provide a means by which particularly contractors have an avenue of providing that information.

20 I have no further questions.

THE COMMISSIONER: Mr Stevenson.

MR STEVENSON: Just one matter for Mr McClure. As you know I'm the barrister for Sydney Water. In answer to some questions Mr Payne asked you you mentioned the investigative starter database and you gave evidence of its deletion. Do you recall that?---Yes.

30 In respect, tell me if you know this or not. In respect of what period has that deletion occurred?---I understand the database would've been in place up until like early 2001 so the deletion would've, and I can only surmise because I don't know, it would've been around that time.

THE COMMISSIONER: In respect of what period?

MR STEVENSON: From July 2001 back?---Okay. I don't know. I don't know. It would've been several years I would assume but I don't know.

40 So the database does exist doesn't it now from July 2001 to the present day?---Yes. Yes.

And the deletion you're referring to is it for the period of years before that?---Period, yes.

Mr Sesel can tell us about that you think?---I understand.

Thank you, Mr McClure.

THE COMMISSIONER: Yes, thank you, Mr McClure, you may be excused.

**THE WITNESS EXCUSED**

**[10.39am]**

10 MR PAYNE: Commissioner, I call Mr Massih and I wonder if inquiries might be made outside whether Mr Gordon has arrived as yet.

THE COMMISSIONER: I saw Mr Gordon.

MR PAYNE: He's here.

THE COMMISSIONER: He's not in the hearing room but I've seen him.

MR PAYNE: Perhaps somebody assisting might be able to find him.

20 THE COMMISSIONER: Here he comes.

MR GORDON: Commissioner, can I have a moment just to unpack.

THE COMMISSIONER: You can unpack while the witness is here.

MR GORDON: Yes.

THE COMMISSIONER: Mr Massih, Mr Stevenson, do you represent Mr Massih?

30 MR STEVENSON: I seek leave to appear for Mr Massih and no section 38 order is required.

THE COMMISSIONER: Yes, yes, thank you. Mr Massih, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR MASSIH: Under oath.

40 THE COMMISSIONER: Would you swear Mr Massih in please.

MR PAYNE: Mr Massih, what is your full name?---Michael Luke Massih.

And you're an employee of Sydney Water?---That's correct.

I think you're a senior contracts manager?---Correct.

10 Can I show you a document. Is that a statement you have made to this Commission dated 21 September, 2010?---Yes, it is.

You've had an opportunity to consider it recently?---Yes, I have.

Can I draw your attention to paragraph 3. I think, I think you would tell the Commissioner wouldn't you that you are a senior contracts manager and that that's just a typographical error?---That's correct.

20 Are there any other changes or corrections you wish to make to the document?---I don't believe so, no.

Do you tell the Commissioner that the contents of the document are true and correct to the best of your knowledge and belief?---That's correct, I do.

Commissioner, I tender the statement with its annexures.

THE COMMISSIONER: Yes, the statement of Mr Massih and the annexures comprise Exhibit P161.

30

**#EXHIBIT P161 - STATEMENT OF MR MASSIH AND ANNEXURES**

MR PAYNE: I just have a few questions for you, Mr Massih, about the document. Can you turn to paragraph 7 and can I just ask you about the last sentence. You're talking here about two invoices from Mr Makucha which are annexures A and B to your statement?---Yes.

40 And they relate to certain demountable offices described in those invoices? ---Yes.

And you say based on your knowledge and experience Sydney Water Corporation would not purchase used buildings of this type, detailed on annexure A and B, the point you're making there is that if there was a need for demountable office accommodation within Sydney Water, within your experience used buildings would not be purchased by Sydney Water? ---That's correct.

And then can I ask you just in paragraph 11 where you're summing up your view of the buildings described in those invoices, the first thing you say is from your review of Sydney Water Corporation's records there was no immediate need for any demountables at the time these were apparently purchased by Sydney Water?---That's correct.

There was no business for the purchase which was required by Sydney Water's internal guidelines?---That's correct.

10 There was no written quote as required by Sydney Water's guidelines?  
---That's correct.

And in any event in your experience Sydney Water wouldn't be buying used buildings in any event?---That's correct.

Yes, Commissioner, I have nothing further for Mr Massih.

THE COMMISSIONER: Mr Gordon.

20 MR GORDON: Thank you, Commissioner. Mr Massih, you never met Mr Makucha?---No.

Never had any discussion with him on the phone?---Not at all.

Thank you.

THE COMMISSIONER: Mr Stevenson?

30 MR STEVENSON: I have no questions, Commissioner, thank you.

THE COMMISSIONER: Thank you, Mr Massih, you're excused.

**THE WITNESS EXCUSED**

**[10.44am]**

THE COMMISSIONER: Commissioner, I call Mr Inberg.

40 MR STEVENSON: And I seek leave to appear for Mr Inberg. He does not require a section 38 order.

THE COMMISSIONER: Thank you. Mr Inberg, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR INBERG: Affirm.

THE COMMISSIONER: Yes. Would you administer the affirmation, please.

<GARY MARK INBERG, affirmed

[10.45am]

THE COMMISSIONER: Mr Payne.

MR PAYNE: Mr Inberg, what's your full name?---Gary Mark Inberg.

And your occupation?---I'm the manager of property at Sydney Water Corporation.

10

And you were for a period the immediate supervisor of Mr Edward Harvey?  
---Yes, I was.

For what period was that?---From approximately July 2006 to February 2010.

When Mr Harvey's employment was terminated by Sydney Water?  
---Correct.

20 You've made a statement in this matter?---Yes, I have.

Can I show you a document. Is that a statement you've made to the Commission?---Yes, it is.

Have you had a chance to examine its contents recently?---Yes, I have.

Are there any corrections you wish to make to the statement?---No, I don't believe so.

30 Do you tell the Commissioner that the matters contained in the statement are true and correct to the best of your knowledge and belief?---Yes.

Commissioner, I tender the statement. There are a number of exhibits referred to in two volumes, may I tender those exhibits.

THE COMMISSIONER: Well, they've already been, are they separate volumes?

40 MR PAYNE: They're separate volumes, Commissioner.

THE COMMISSIONER: Can I see the volumes please. Exhibit P162 is the statement by Mr Inberg.

**#EXHIBIT P162 - STATEMENT OF MR INBERG**

THE COMMISSIONER: The exhibit is folder 1 to Mr Inberg's statement is Exhibit 163.

**#EXHIBIT P163 - VOLUME 1 OF ANNEXURES TO MR INBERG'S STATEMENT**

10 THE COMMISSIONER: Exhibit 164 is folder 2 containing additional exhibits to Mr Inberg's statement which is Exhibit 162.

**#EXHIBIT P164 - VOLUME 2 OF ANNEXURES TO MR INBERG'S STATEMENT**

THE COMMISSIONER: Thank you, Commissioner. Mr Inberg, were you involved in any way in recruiting Mr Harvey?---Yes, I was.

20 You were aware were you that he had been employed by RailCorp prior to coming to Sydney Water?---Yes, I believe for a period of about three months.

And do you know one way or the other whether any inquiries were made of RailCorp prior to offering Mr Harvey employment?---No, I don't believe so. My understanding was that the recruitment agency did try and contact people at RailCorp.

30 And were unsuccessful?---That's my understanding.

And when was the first time you learnt that Mr Harvey's employment had been terminated by RailCorp for unsatisfactory performance?---Post his termination.

By Sydney Water?---Correct.

So the entire time he was at Sydney Water you didn't know that he had been terminated for poor performance by RailCorp?---No, I didn't.

40 THE COMMISSIONER: Mr Inberg, Mr Harvey was employed in a fairly responsible position wasn't he?---Yes, he was.

I find it extraordinary that he, that knowing that he'd been employed by RailCorp for a short period that more energetic attempts were not made to find out why he, his employment there terminated and what RailCorp thought of him. Can you explain that please?---Yes. My recollection at the time was that he indicated that it was a temporary contract position. His, the recruitment agency which was Downing Teal (not transcribable) had

contacted two other employers, one of them was the Department of Planning and, that's the one before that, both of them he was there for, sorry, both of them he was there for a lot longer period of time, I think four to five years. Those, the reports from Downing Teal indicated that he was a very reliable, very ethical person. That's my recollection.

So it was decided simply not to bother about RailCorp?---I think at the time that we relied on two of the three reference checks that were made by Downing Teal.

10

And ignored the last employment?---As I indicated, Mr Harvey at the time indicated that he was there only for about a period of three months under a contract or services I think from recollection were terminated before Christmas. It wasn't a long term employment.

Did it occur to you that the contract could be a contract of probation?---No, it didn't at the time.

Can you explain that?---No, I can't.

20

Have steps been taken in Sydney Water as a recruitment policy to ensure that this kind of thing won't happen again?---My understanding is that that is the case. Recruitment within Sydney Water external parties, external recruitment is conducted by the recruitment section of HR.

Yes, thank you.

MR PAYNE: What steps are in place, first of all you accept knowing what you do now that not finding out that RailCorp had terminated Mr Harvey's employment for inadequate performance was a very significant matter?  
30 ---Well, I don't know the details of his termination if that's what you're asking.

Accept from me that Mr Harvey has given evidence that he accepts that he was placed under a strict management regime and was ultimately terminated because his performance was inadequate?---Okay. I wasn't aware of that that's what he indicated.

40 Knowing that you'd accept from me that that was a highly significant matter to be taken into account about whether he'd be given a senior position within Sydney Water?---Yes, if I had of known that, yes.

Or any position within Sydney Water?---I recall in the, part of the Downing Teal interview and recruitment report that they provided, one of the indications in that report was that Mr Harvey reported or made mention of that but he, about his ethical standards and of that nature.

You draw attention to that to tell the Commissioner that if you had known in the light of that statement from Mr Harvey, that he'd been terminated by RailCorp for poor performance that you would or would not have taken that matter into account?---I certainly would have.

Would you have recommended his employment by Sydney Water in any position if you had known that he'd been terminated by RailCorp for poor performance?---I would've wanted to know more about the situation from RailCorp.

10

What steps are in place to make sure that within Sydney Water that new employees occupying any sort of position of trust that checks are made of all relevant references?---My, my understanding the recruitment section of HR are taking this on board. As to what steps they've taken, I don't know.

Is that something I could ask your internal audit department about? Is that something within their responsibility?---I don't believe so. I would suggest that it's more of a HR issue, HR recruitment issue.

20

Would the internal auditors be interested in this question?---I would've thought that they would be interested. But in my opinion it would be more of a HR recruitment area that needs addressing.

THE COMMISSIONER: Mr Payne, I'm sure that Mr Stevenson will be dealing with this in his closing address.

MR PAYNE: Yes, thank you, Commissioner. Can I ask you some questions about your statement P162 and in particular can I take you to section that starts on paragraph 10 about Outdoor Advertising?---Yes.

30

In June/July 2008 you became aware of a state environmental planning policy 64 relating to advertising on government owned land?---Correct.

Prior to that there'd been some prohibition on advertising on government land had there?---No. Prior to that the, there was certainly a view within Sydney Water that at the time it was something that we didn't want to particularly pursue. But when the new policy 64 came out it was felt that we should have a look at it.

40

And there was a thing created called the Outdoor Advertising Project? ---Yes.

Now you were ultimately responsible for that Outdoor Advertising Project I take it?---Yes.

You appointed Mr Harvey though to a more hands on roll on the day to day management of that project?---Correct.

Is that correct?---Correct.

Was there anybody else appointed by you to have a role in that project?---At the very beginning we did employ an external consultant contracts person who would assist us in analysing the preliminary situation as to the possibility or the opportunity if you like.

10 And is that Mr Lee and Mr Gray that you refer to in paragraph 13 of your statement?---Yes, yes, I am. Yes, I am.

And they were external experts, one in town planning and one in outdoor advertising marketing?---Correct.

And a formal proposal was put to the Sydney Water Corporation board about this outdoor advertising opportunity?---Yes, it was.

Did you make that presentation to the board?---Yes, I did.

20 Was Mr Harvey there?---I don't recall.

And that formal proposal as you say in paragraph 15 was adopted in principal by the Sydney Water (not transcribable)?---Yes.

There was an adoption in principal of the project and there were carve outs for alcohol or other objectionable material?---Correct. Correct.

And there was to be a tender of a small package of sites?---Yes.

30 That took place?---The tender, no it did not take place.

And is that for the reason you give in paragraph 16, namely the global financial crisis?---Yes.

Now I want to ask you about the communication of that decision. Who took the decision despite the in principal approval to stop the tender in relation to Outdoor Advertising?---I did, but I did it in consultation with Sydney management.

40 Yes. And did you communicate that to decision to others and in particular to Mr Harvey?---Yes, I did.

What did you tell him?---I can't recall the exact words, but said that we would put it on hold pending the, the GFC situation and, and improved market conditions.

And were there other projects within Sydney Water at that time being put on hold because of the global financial crisis?---Yes, there was.

And did you explain to Mr Harvey that, that the global financial crisis that there wasn't sufficient funding available for this project to go ahead at the time?---It wasn't a question about sufficient funding, it was more a question about the market conditions at the time.

So the lack of interest on the advertising side for near sites - - -?---Yes.

- - - given the global financial crisis?---Yes.

10 You told him that, well what did you tell him about when the outdoor advertising opportunity might again be considered?---I said we'll just monitor the market conditions and determine when we thought the appropriate time was to kick the project off again.

Did you say anything to him to get him to understand that it might be some part of his decision making, unilateral decision making function to restart the project?---I'm not quite sure I understand the question.

20 Well, you were the one who was ultimately responsible for Outdoor Advertisings you told me?---Yes.

You made the decision to start it?---Yes.

You made the decision to temporarily suspend it?---Correct.

Did you say anything to Mr Harvey - - -

MR MAKUCHA: Can you speak up, please?

30 MR PAYNE: Did you say - - -

THE COMMISSIONER: You know I, I can hear Mr Payne perfectly well. I can't understand why you have this continuous difficulty Mr Makucha. My Payne, can you, for the sake of Mr Makucha yet again, could you please try and speak a little bit louder as he seems to not to be able to hear even though he's much closer to you than I am.

MR PAYNE: Yes, Commissioner, I'll try and speak up. Mr Inberg, - - -

40 MR MAKUCHA: Sorry. Thank you, Commissioner.

MR PAYNE: Mr Inberg, I was asking you some questions about the decision making process and really what I want to know is this?---Yes.

Did you say anything to Mr Harvey to indicate that despite the fact that you, Mr Inberg, were in charge that he Mr Harvey was free to restart the outdoor advertising project whenever he felt?---No.

Can you give us a time, you say in paragraph 15 that this in principle approval was March 2009, how soon after that did you make the decision to suspend the project because of the global financial crisis?---My recollection within, within a matter of weeks, not sooner.

So April or May at the latest 2009?---I think it probably would've been even earlier than April.

10 And you know now that Mr Harvey began submitting invoices in relation to outdoor advertising work purportedly carried on by Mr Makucha starting on I think 23 July, 2009?---Correct.

So that we're clear you had told him in terms well prior to that the outdoor advertising project was suspended?---Yes.

Was there any other outdoor advertising work that you and your department was involved in other than this outdoor advertising project?---No.

20 And I think you told me before Sydney Water hadn't been involved in outdoor advertising at all prior to you coming up with the opportunity in relation to (not transcribable) is that the position?---Correct.

And can I then ask you some questions by reference, do you still have the bundles in front of you?---I do.

I want to ask you about the second one P164 and there are page numbers on the top right-hand corner in red, they're the page numbers I'm going to ask you about?---Right, yes. The second bundle starts with P401?

30 Correct, that's the one I want to ask you about?---Okay.

Can you go forward in that document to P723. That's a letter that came to your attention in late November 2006?---Hold on.

I'm sorry. Tell me when you're there?---Yes, P723.

40 That's a letter from Mr Makucha to the Premier, the then Premier of New South Wales and various other ministers, the chair of the board of Sydney Water and various others?---Yes. Yes.

That came to your attention in or about the end of 2006?---No, I would say that I received that fairly soon after that date of that fax but it's dated 22 November so I would've received it fairly - - -

Fairly promptly thereafter?---Fairly promptly, yes.

It's sent by fax numbers to all of the people identified at P723. You were given the task of responding to that letter on behalf of Sydney Water weren't you?---Yes, I was.

And your response is at P728. Tell me when you're there?---Yes, I'm here.

That is a letter signed by you?---Yes.

10 And you see there in the third last paragraph, "Mr Harvey and myself are willing to meet with you", that's Mr Makucha?---Yes.

By that time you had appointed Mr Harvey to have the day to day management of this project in relation to Mascot Road. I'm sorry - - -? ---Baxter Road.

Baxter Road at Mascot?---Yes.

20 But you were responsible ultimately within Sydney Water at all relevant times in relation to that property and the attempts Sydney Water was making to have Mr Makucha removed?---Yes.

Did the meeting you suggest there take place do you recall?---I did recall, yes, we did have the meeting. I can't recall whether it actually occurred Tuesday, the 28<sup>th</sup>, I don't have my diary with me.

And Mr Harvey has told us that on many occasions he met with Mr Makucha in the foyer of the Sydney Water building. Did your meeting take place in the foyer?---No, I did not, it took place in my office.

30 Did you know prior to 27 January this year that any foyer meetings had taken place between Mr Makucha and Mr Harvey?---No, I wasn't aware.

If you did find out about that matter what would've been your reaction? ---More than angry I think.

40 Can you explain to the Commissioner why?---Well, I indicated to Mr Harvey on a number of occasions that at no time was he to have meetings with Mr Makucha other than in the offices of Sydney Water and that other people should be present at all times.

And what was the reason for giving him that direction?---I didn't particularly, I suppose the word is trust Mr Makucha and his intentions.

Having regard to the allegations contained in the letter you were responding to here from Mr Makucha about Sydney Water and its solicitors engaging in a variety of what he describes as criminal conduct?---Yes.

And for that reason at the very outset of this project you gave Mr Harvey the direction we've spoken about?---Yes.

Can I then ask you about the offer of compromise ultimately made about the Baxter Road property. If you go to P736 in this bundle?---Yes.

That's a letter signed by Mr Harvey but I think approved by you?---Yes.

10 That offer of compromise was as I understand it clearly made conditionally and I think the word conditional is actually emboldened in the letter?---Yes, it is.

Did you settle this letter with Mr Harvey?---I believe I did.

And I think you say in your statement at no time did you ever authorise Mr Harvey to pay any money without the satisfaction of the condition there recorded?---Absolutely.

20 And can I just ask you just on that topic this seems to be almost the last direct involvement you have with Mr Harvey and his attempts to remove Mr Makucha from the Baxter Road premises. You say in your statement that you did have a number of conversations with Mr Harvey about that matter. Can I just ask you about that. How regularly did you speak to Mr Harvey about this matter?---Well, I certainly had if not daily sort of second, every couple of days I would meet and discuss matters from his particular area of operation on, you know, a weekly basis. In particular in relation to this matter when it was raised my request was how are we going, are we getting, getting somewhere? The answer I seemed to be, to be getting all the time was, Yes, we're getting there but it's very slow, Mr Makucha every time we  
30 get him into court there's always another excuse as to why he can't comply with the writ of possession or why he can't remove his chattels or, but that, this went on for quite a long period of time.

By 28 October, 2007 Sydney Water had been entitled - - -

THE COMMISSIONER: 2007? 2007?

MR PAYNE: Yes.

40 THE COMMISSIONER: I see. The letter, the only reason that I mention that is the letter at 736 is 2008.

MR PAYNE: Since 2007 you'd been entitled to a writ of possession from the Supreme Court of New South Wales over the Baxter Road property?  
---Yes.

By you I mean Sydney Water as the convenor?---Yes.

And yet in October 2008 the date of this letter you're making this conditional offer to get Mr Makucha out of the property?---Well, the writ of possession as my understanding and my recollection is that the writ of possession only came about I think in, it was in a later, later, I think it was early, late 2008 or early 2009. As I said, indicated before, every time we tried to get Mr Makucha into court and when he did appear in court he either appeared by himself or without, without representation and there was always an excuse as to well, I need more time because I've got medical conditions or I've got sickness in the family or I need approval from the  
10 Federal Airports Corporation to bring in a crane, there was always some excuse, if you like, and the court gave him the time and the time was, you know, it varied from, from recollection from six to eight weeks at times.

MR PAYNE: And just so we understand it, so whilst Sydney Water was entitled to the writ of possession, that entitlement was stayed progressively by various orders of the Supreme Court of New South Wales?---Correct, that's, yeah, that's my understanding, yes.

And this 29 October, 2008 letter was an attempt to provide an incentive to  
20 Mr Makucha to get out of the property?---That's correct.

But it was conditional and always remained conditional so far as you're concerned, on him being out of the property?---Correct.

Can I ask you to turn over to P738 which is an email, I think Kyera Wilson was then your executive assistant?---Kyera Wilson, yes.

Kyera, I'm sorry?---That's all right.

30 Was then your executive assistant?---Correct.

And the email she sent was to you, subject Paul Makucha, cc Mr Harvey and a Tracy Jamieson?---Yes, correct.

Who was Mr Harvey's secretary, was she?---No, no, actually at that point in time Kyera was doing quite a bit of work for Tracy in information and data management and she, I, she'd taken the phone call and I had directed her to put it in a file note to me and to cc Ed, Mr Harvey and to her, the lady she was working for at the time, Tracy Jamieson.  
40

And is that because you were concerned about the content of the message? ---Yes, I was.

Can I just take you through it because there are a number of aspects of the message that I suggest to you are troubling. Firstly, this is a message that as you understood it was being left for you personally?---Yes.

And she has quoted the words there, "It has become impossible to negotiate with Ed Harvey because each time Ed consults with Gary Inberg there is a 180 degree turnaround and he would like it if Gary would leave Ed alone." Were you concerned when that message was relayed to you?---I'm not sure of the word concerned, I, I took it at being that we were actually getting under his skin so to speak and hopefully getting him to a point where we would see some movement from him in removing himself from the property, that the pressure was starting to get to him I suppose.

10 Weren't you a little concerned that Mr Makucha was conveying to you that it seems that he wished to deal with Mr Harvey alone and he didn't want you as the hard man getting involved in these negotiations?---Yeah. I, no, I, I had no reason to believe that Mr Harvey was doing anything other than what I was directed him, directing him to do and the strategy we'd adopted in terms of removing Mr Makucha from the property.

THE COMMISSIONER: Well, what about 180 degree turnaround? What did you think that meant?---I honestly meant, felt that Mr Makucha was, that basically the pressure that we were putting on Mr Makucha was starting  
20 to come to play.

What do you think that meant, Mr Inberg, 180 degree turnaround, what did you think that meant?---Only, only that, well, it certainly didn't come into my mind, Commissioner.

Didn't you understand from that that Mr Harvey was saying one thing to Mr Makucha and he would then speak to you and he would have to say something, if it was to use the same phrase, 180 degrees different?---No, I don't, no, I'm sorry, I don't believe I did take it that way.  
30

Why not?---Because I believed that - - -

Is that the ordinary plain meaning of these words?---No, because I believed that Mr Harvey knew exactly what was my wishes, he was taking my direction in terms of getting Mr Harvey, Mr Makucha off the site. He knew exactly what was going on. I had no belief that there was anything contrary to that and in fact - - -

40 But what is your explanation for Mr Makucha saying that every time Mr Harvey spoke to you he would come back to Mr Makucha and there would be a 180 degree turnaround?---Well, to some degree I'd have to say that I took what Mr Makucha's view was with a bit of a grain of salt.

Are you saying you didn't believe what Mr Makucha was saying?---Yes, I am.

And why is that?---Basically because of his past record and, and, and performance to date with us.

Did you ask Mr Harvey about this 180 degree turnaround?---I certainly discussed the email with him and mentioned to him that we seemed, seemed to be getting, putting the pressure on and he seemed to be starting to react to the pressure that we were putting on him.

Did you ask him to explain the reference to the 180 degree turnaround?---I can't recall.

10 That was important to you?---No, because at the time Mr Makucha was, given his performance and his reaction to what we were trying to achieve was fairly irrational if you like.

When you, at what stage in these proceedings or negotiations of Mr Makucha and Mr Harvey did you tell Mr Harvey that he always had to meet Mr Makucha in his office with the, with a third person present?---On a regular basis.

20 Yeah, when, when did you, at what, what date did you tell him that?---I don't recall the actual (not transcribable).

What year?---Certainly in, I think as early as late 2007.

So you had told him that before this, you told him that months before - - -?  
---Yes.

- - - this email of 12 November, 2008 was seen by you?---Correct.

30 Did this not suggest to you that Mr Harvey was seeing Mr Makucha without a third person present?---No, it didn't, it didn't, I had no reason to believe that Mr Harvey wasn't doing what I asked him to do and instructed him to do.

Would you not have wanted to find out who the third person was, whether this third person could establish whether there had been a 180 turnaround or not?---No, it didn't, at the time it didn't dawn on me to ask who the third person was.

40 Did you tell Mr Harvey seeing that you didn't trust Mr Makucha to ensure that a note was taken of what was said at these meetings that Mr Harvey was to attend with a third person present?---Yes, I did ask Mr, I recall saying that to Mr Harvey, that he needed to take notes of the meetings.

Did you ever ask to see those notes?---I can't recall, I may have.

And did you?---I, I can't recall at the time because I know that he kept informing me that he was having meetings with Sparke Helmore, the solicitors.

Where would these notes have been kept?---They would have been kept on a file that Mr Harvey would have kept.

Did you look to see whether those notes existed?---No, I haven't.

But despite all these disputes with, involving Mr Harvey and Mr Makucha that had been going on for so long and are so important to Sydney Water you haven't bothered to look to see whether the notes that you asked  
10 Mr Harvey to have kept of the meetings exist?---No, I, I - - -

What's the explanation for that?---Well, they basically trusted Mr Harvey to do the right thing. I mean I've got to rely on my senior management team to, you know, to do the right thing.

Yes, Mr Payne.

MR PAYNE: Can I just ask you about this file concerning Baxter Road.  
20 Mr Harvey kept one throughout so far as you're aware?---As far as I'm aware.

And you know now don't you that a number of these invoices that we'll come to in a moment and letters from Mr Makucha and letters from Hall Chadwick and so on about a joint venture and the highways and byways of that joint venture were actually kept on that file by Mr Harvey?---I, I would expect they would've been.

To be fair to you, Mr Inberg, throughout this whole period from '08 until  
30 Mr Harvey's exposure when he came to you on 27 January, 2010 did you ever once look at that file?---No, I didn't.

Do you accept knowing what you know now about the contents of that file that if you'd opened it even once you'd have been horrified?---I certainly would've been.

And this whole business would've stopped then and there?---Certainly would've.

Why didn't you at least once have any sort of review of the file?---I can  
40 only say that I, I relied and trusted Mr Harvey and when he, when he presented the situation on 27 January this year I was both shocked and, and felt betrayed.

I accept that, Mr Inberg?---Mmm.

What I want to know is you had no system whatever to review any files of staff working at your direction at the time?---The files are present with the individuals and they can be reviewed at any time.

They can be?---Yes.

But was it your practice to review any file at any time?---It, it has been and always been my practice to review significant files particularly files where Sydney Water has a higher level of risk at stake, files where we're spending millions of dollars on major pieces of equipment or, or, or services rendered.

10 THE COMMISSIONER: Where was Mr Harvey's office in relation to yours?---In, in, in Bathurst Street it was about 30 to 50 metres away. In, in new Parramatta head office he's across the floor from me.

And so if anybody wanted to, of someone arrived in the lift and went to see Mr Harvey would they have passed your office or not?---No.

20 MR PAYNE: Would they walk past other offices of people who are reporting to you?---Not necessarily, if the room bookings for instance for that particular meeting might've been on a different floor as an example, they might've gone directly to that floor which is the normal case.

There are meeting rooms within both Sydney Water headquarters, the old one and the new one not on your floor, is that what you're saying?  
---Correct.

THE COMMISSIONER: Mr, we'll come to that, it's all right.

MR PAYNE: I just want to understand this file review system if I could for a moment, Mr Inberg?---Ah hmm.

30 You said you'd review important matters and you'd actually look at the file?---Yes.

Where multi-million dollars are at stake. You knew here though didn't you that you were dealing with a man who'd been, there was no lease on this property for many years by this stage?---Yes.

You knew that he had no complaints of serious criminal conduct about Sydney Water employees and its solicitors in the past?---Yes.

40 Including to the Premier of New South Wales and the chairman of your board?---Yes.

A matter that was engaging a significant amount of, to your observation at the time of at least one of your executives Mr Harvey?---Yes. Yes.

You had solicitors appointed?---Yes.

You were in regular dealings in the Supreme Court of New South Wales?

---Yes.

And at the time Mr Harvey left in January, 2010 Mr Makucha was still in this property wasn't he?---Yes, he was.

THE COMMISSIONER: To your knowledge?---He was, yes, yes, yes, it was to my knowledge because that's the information that was kept, kept being given to me by Mr Harvey.

10 MR PAYNE: Was there no occasion over the course of those years when you would've regarded it as appropriate to sit down either on your own or with Mr Harvey and conduct a review of the file and what was going on? ---I, I certainly on the occasion sat and discussed a number of issues with Mr Harvey that he was dealing with including this particular one.

You never asked to say, Ed, can you bring the file and we'll have a look at what's been going on?---Basically he came and put, he may have brought the file with him but we talked more about what was happening and what the actions he was taking.

20

And you know now that this file contained drafts from Hall Chadwick and all manner of things concerning this joint venture that you knew nothing about?---Well, I don't know if the file actually contained the Hall Chadwick information or that or information from the solicitors.

But you know that he was keeping it in his office in a file don't you?---Yes, but that may have been in a separate file as far as I'm aware.

30 I see. And over this period of time to your observation what percentage of Mr Harvey's time was spent on dealing with Mr Makucha to your observation?---To my observation less than 10%.

His estimate of between 10 and 20%, would you care to comment on that? ---That was certainly not my impression.

And was it ever reported to you that there were meetings, you told us you didn't know about the foyer meetings, were you ever told that meetings were taking place with Mr Makucha in the premises anywhere in Sydney Water?---No. No.

40

Did you ask Mr Harvey any direct questions about what it was he was discussing with Mr Makucha?---The, the, the, the discussions were never about the, any meetings that he was having with Mr Makucha, it was all about what was happening in the, in the Supreme Court to get possession of the site.

Knowing what you do now, Mr Inberg, and this is a question about future conduct do you accept that it would be a sensible matter to conduct the sort

of file reviews you've told the Commissioner about in relation to some contracts more widely across the board?---Yes, and I've initiated a review of all contract files.

And what, personally examine what's going on in relation to all of those contract files?---Yes.

Because the property department as you rightly point out is responsible for a great deal of Sydney Water money?---Yes, it is.

10

Ultimately owned by the people of New South Wales?---Yes.

And you're going to review all of those files?---Yes.

What, if anything, do you know about any broader proposal within Sydney Water for filing reviews of that kind?---I know that the whole procurement process is under review at the moment, we've initiated a number of other things as well. We've had refresher training for the staff on fraud prevention and procurement of, procurement processes as well as contracts management.

20

Did you conduct team meetings amongst your staff throughout 2007, 2008, 2009?---We have regular team meetings. Approximately once a month.

Was Mr Harvey present at those meetings in '07, '08 and '09 regularly? ---Yes. Yes, he was.

At those meetings was the subject matter of Baxter Road and Mr Makucha ever discussed?---No.

30

Is there any reason for that?---They, the staff team meetings were on broader, broader subjects more pertaining to staff in general.

And there was never then an occasion at any of these team meetings for anybody else perhaps who'd seen Mr Makucha and Mr Harvey together to say anything?---No, I don't believe so. But there was indicated at all the teaming meetings that if any of the staff or my staff have an issue or something that they need to report to or report on or have a, have something they'd like to come and talk to me about, my door was always open to them.

40

Sorry, just excuse me one moment, Commissioner. I have nothing further for Mr Inberg.

THE COMMISSIONER: Mr Payne, what date was the order for vacation of possession made by the Supreme Court?

MR PAYNE: I think it was 22 September, 2007. I can check, but Commissioner, you'll recall it was stayed then just for a few weeks and

there is now then a series of documents and they' re in Exhibit P126 and P127 where Mr Harvey consented two extensions of that stay right through to (not transcribable)

THE COMMISSIONER: Yes.

MR PAYNE: Sometimes Mr (not transcribable) I think of counsel was appearing and they appear to have been on instructions and put it this way, proper reasons at the outset. I'm sorry, Commissioner, it was, the order was  
10 made on 11 September, I'm correct.

THE COMMISSIONER: Thank you. Mr Inberg, did you know that Mr Harvey was consenting to stays of execution of the court order requiring Mr Makucha to give Sydney Water possession of the Baxter Street site?---He certainly informed me of stays of execution right throughout.

My question was to you, were you aware that Mr Harvey was consenting to the stays of execution?---Yes, yes, I am. Can I explain that but?

20 And what did you do about that?---Well, it was all about trying to get Mr Makucha off the site. And Mr Makucha - - -

Yes. But you had a court order. Why did you agree to Mr Harvey, why didn't you take up with Mr Harvey the fact that here he had a court order in your favour and he was consenting to it being stayed?---Mainly because Mr Makucha was, was saying that he couldn't move his things off the site. That he needed more time.

30 Why did you give him more time?---Well, because the way I understood what was happening was the court was giving him time to provide the, his ability to get his chattels off the site.

But, I asked you before whether you knew that Mr Harvey was consenting to the order for possession being stayed from time to time?---From time to time.

And you replied yes. Was that answer correct?---Yes.

40 So you knew that Mr Harvey, it wasn't the court, I mean I know that, I know that courts are often criticised for delays, but these delays you agreed to. I don't understand that?---Well, Mr Harvey continually indicated to me that the reason why we or he gave the stay of, of execution was simply to enable Mr Makucha to effectively the time that he kept telling us that he needed to get off the site.

But why would that interest you? You had an order, why didn't you say, I am not interested in this. We have a court order. He's been messing us around for months if not years now get him off the site. Why did you not

take that attitude? I just don't understand it?---Well, by the middle of 2009, I certainly had taken that attitude with Mr Harvey.

Well, why did it take so long?---Mr Harvey kept on indicating to me that Mr Makucha needed more time. The he was telling Mr Harvey that he needed time because of his mother's illness or he had a heart condition or - - -

10 No, you've explained that. But what I don't understand was why you just went along with it?---I wish I could give you a better explanation, but I trusted Mr Harvey to do, that he was doing the right thing, taking good judgement.

It didn't worry you that Mr Makucha was staying there?---It certainly did worry me, but it's something that - - -

I mean it's difficult to criticise Mr Harvey for consenting when you consented to him consenting?---Yes, I understand that.

Mr Stevenson.

20

MR STEVENSON: Mr Inberg, you understand I'm Sydney Water's barrister?---Yeah.

Just (not transcribable) questions the Commissioner was just asking you about. It's the case isn't it that Sydney Water had engaged external solicitors to advise it in relation to the possession proceedings?---My understanding was that Sparke Helmore were engaged, had always been engaged and the fact that they weren't, had been dismissed by Mr Harvey I only found out in, in February this year.

30

There was a few things there?---Sorry.

First of all, you knew that Sparke Helmore had been retained by Sydney Water to get the order for possession?---Correct.

And you understood, I think you were saying that Sparke Helmore had continued to be advising the Corporation in relation to the possession proceedings up to I think the day you just mentioned?---Correct.

40 Are you telling the Commissioner that you've since heard that Mr Harvey ceased to use Sparke Helmore at some point in the intervening period? ---That's my understanding.

And what, what is your understanding to the point beyond which Sparke Helmore were not retained?---I've since learnt that, that Sparke Helmore were not retained post early 2009.

And understanding as you did that Sparke Helmore were retained throughout the period, was it your state of mind that when it came to a question of whether or not applications by Mr Makucha for continuations of the stay concerns Sparke Helmore had given advice about the matter?  
---That's my understanding.

THE COMMISSIONER: Did you ask?---Yes. When, during the discussions with Mr Harvey, there was no question that Sparke Helmore were still, well that they weren't involved.

10

Did you ask Mr Harvey whether the consent was in accordance with Sparke Helmore's advice?---Yes.

And what did he say?---He indicated that it was.

Every time? Every time you consented to him consenting - - - ?---It was - - -

20 - - - it was on the basis that he had told you that Sparke Helmore - - -?---I can't recall that he told me every time.

MR STEVENSON: Can I go back to some earlier evidence you gave. You were asked some questions about the process of recruitment of Mr Harvey?  
---Yes.

And the question of not finding out from RailCorp what had evidently happened during Mr Harvey's employment there?---Yes.

30 You mentioned that in context further Downing Teal, a human resources management consultancy services?---Yes.

I'll show you this document. Is that the report that Sydney Water Corporation received from Downing Teal in relation to Mr Harvey?---Yes.

And is the process that Sydney Water Corporation engages an external consultant like Downing Teal to conduct preliminary responses to investigate and analyse responses made to advertisement published by Downing Teal for a development position?---Yes, correct.

40 And they provide a report, they provided you this report about Mr Harvey?  
---Yes.

So the first you heard about Mr Harvey was reading this report?---Yes, it is.

And obviously you can see from the report, details of his previous employment including with RailCorp - - -?---Yes.

- - - on page 7?---Yes.

But on succeeding pages earlier and the lengthy employment with other government departments and entities?---Yes.

I tender that document.

THE COMMISSIONER: Yes. The report from Downing Teal is Exhibit P165.

10

**#EXHIBIT P165 - REPORT FROM DOWNING TEAL**

MR STEVENSON: And Commissioner, another document.

THE COMMISSIONER: Mr Stevenson, can you just draw to my attention, please, where Downing Teal, these deals were, Mr Harvey's employment with Railcorp?

20

MR STEVENSON: Page 7. The page is on the, the pagination is at the bottom. Commissioner, consistent with the usual practice, the most recent employment is dealt with first and then on succeeding pages- -

THE COMMISSIONER: Yes.

MR STEVENSON: - - -we go back to earlier employment, back I think to the 60's.

30

THE COMMISSIONER: And there's no, there's nothing, no explanation as to why his, in this report as to why his employment was terminated?

MR STEVENSON: No. Going to reference checks now, I show you this document showed a telephone reference check. Was this a document which was provided to Sydney Water Corporation and thus to you by Dowling Teale and the process of them reporting to Sydney Water about Mr Harvey's application for employment?---Yes.

40

And you saw that it was a telephone reference check, by I think Ms Wilson at Dowling Teale, of two previous employers?---In- -

Director of Land Management and the North Coast Department of Commerce?---Yes. I think there was a second report as well. I'm sorry.

I'll tender that as your, I tender that document.

THE COMMISSIONER: Yes. The telephone reference check of 26 April, 2006 is Exhibit 166.

**#EXHIBIT 166 - TELEPHONE REFERENCE CHECK OF 26 APRIL 2006**

MR STEVENSON: You say you have a recollection of there being another telephone reference check report?---Yes, I believe so.

10 Was that one about Railcorp- - -?---No.

- - -or someone else?---Ah, someone else.

All right. And you told us earlier that, I think you said you understood that the recruiting agency had tried to contact Railcorp without success. Is there any more to your memory about that?---No.

Was it Ms Wilson who told you that, Ms Wilson named here as the consultant?---Yes, it was.

20 Can you recall what she told you about what she had tried to do?---That she, that she had tried to contact Railcorp. I can't recall anything more than that.

Do you recall whether there was any particular name of someone at Railcorp that was mentioned to you as a person that could be contacted or that she had tried to contact?---I don't recall.

30 THE COMMISSIONER: It wouldn't have been difficult for you to get in touch with Railcorp, would it? I mean you'd just have to pick up a telephone?---That's true, but I didn't know who the relevant person was that he reported to.

That's something you could have found out pretty easily, couldn't you?  
---Yes.

MR STEVENSON: And is this right, that rightly or wrongly, that the procedure Sydney Water adopted at this time was to allow the external consultants or to ask the external consultants to make inquiries- - -?  
---Correct.

40 - - -and reply upon whatever the result of those inquiries was?---That's correct.

And to not make direct contact with previous employers of job applicants?  
---Yes.

Now, could I ask you a question on another subject now. Since the revelation to you by Mr Harvey of what he had been up to in January this

year, have changes, have system changes occurred in your area relevant to what Mr Harvey told you he'd been up to?---Yes.

What are the changes?---There have been a number of changes. Delegations have been withdrawn.

Sorry, what were the delegations of Mr Harvey at the time of his dismissal? ---He had a delegation up to \$25,000 for goods and materials.

10 Yeah. And what about for services?---Oh, for, sorry, professional services up to \$100,000, but once it reached a level of 50,000 he basically needed approval from me.

And you've seen, haven't you, the dozen or so requests for payments that he made to what I'll call the accounts department for payment to Mr Makucha, haven't you?---Yes, I have.

And was it your assessment that it looked as if Mr Harvey was endeavouring to keep the quantum of his requests under his- -?---Under his  
20 delegation.

- - -delegation limits? All right. So the- - -

THE COMMISSIONER: Excuse me, Mr Stevenson. I'm going to interrupt. I just want to find out about the, perhaps you can deal with this, and that's the delegation, a book of delegation or the delegation book to which Mr Stafford referred, whether that exists.

MR STEVENSON: There's no book of delegation, is there?---The, the, the  
30 - - -

Will you explain to the Commissioner in what documentary form the instructions to Mr Harvey were given about his levels of delegation. ---There's, there's both the delegations manual and there's also the procurement manual. Both of them are available on the intranet which every staff member has access to. The delegations manual on the intranet can be printed into a hard copy if you wish.

THE COMMISSIONER: Sydney Water does not have a book in which the  
40 various delegations are kept?---When you say book, they're actually recorded on, on the intranet, so that when you go in and look up delegations, all the delegations are reported.

I see. But that's where they're kept. They're not kept, where's the hard copy kept?---The hard copy would be kept in, my understanding is, kept with, in, in the finance department shared services, but- - -

And is it kept in the form of a book or not?---(NO AUDIBLE REPLY)

Or don't you know?---I don't know where it, how it's kept in the form of a book in shared services. I certainly, when, when it comes out of printed copies an files and people have access to it.

MR STEVENSON: Commissioner, we know where they are because they're in Exhibit P126. There's a document called procurement guidelines and other documents that we have referred to earlier.

10 THE COMMISSIONER: Yes. I'm just trying to make sense of Mr Stafford's evidence about a delegation book.

MR STEVENSON: We think there's no delegation book as such.

THE COMMISSIONER: Yes. Thank you.

MR STEVENSON: Just going back to the changes that you've caused to be implemented. I'm particularly concerned about changes which would reveal to you what your reports are doing?---Yes. We've instigated a  
20 financial reports which effectively details purchased made by, by, according to vendor and by the approver for purchase orders for my direct reports and below.

So is this right? You get regular, and I'll ask you how regular in a second, reports showing all the purchase approvals that have been made by what I'm calling the accounts department, it's got a more formal name I guess- -? Yes.

30 - - -in respect of the people who report to you?---Correct.

So the Mr Harvey's of this world these days know, do they, that you get I think weekly a report showing precisely how much they have purported to approve within any level of their delegation?---That's correct.

And is it the position that when Mr Harvey was behaving as we know he behaved, there was no system in place to provide you with - - -?---That report wasn't available.

40 You could have of course made inquires to find out what he was doing at any time?---Yes.

But the system's improved now you say because you now get one every week for everyone?---That's correct.

Which hopefully will be a deterrent to the Harvey's of this world in relation to the conduct that we've heard about?---Yes.

Now, can I just ask you questions about your paragraph 4. Have you got your statement there?---Yes.

You're manager, group property. What's the, give the Commissioner some information to show the dimension and the range of the work for which you are responsible in relation to property. So first of all, are you responsible to manage all of the property owned by Sydney Water Corporation- - -?---Yes, that's correct.

10 - - -throughout its area- - -?Yes, that's- - -

- - -of jurisdiction?---Yes, that's correct.

And what kind of, of running expenditure is in your bailiwick?---Group property's responsible for approximately an operating expenditure of about \$60,000,000 per annum with capital expenditure in the order of 25 to \$50,000,000 per annum.

20 And the property upon which Mr Makucha resided is one property. How many properties are there that are in your, that you manage?---There is over 1,500 sites and the, and in excess of over 800 leases.

So the 1,500 properties comprise what, probably ranging from the pump houses we see in our local parks to headquarters at Parramatta?---Correct.

Briefly, what are the range of types of- - -?---Well, they do, they range from pump houses, water and sewerage pump houses through to depots, through to even child care centres that Sydney Water owns.

30 And they're child care centres for Sydney Water staff, aren't they?  
---Correct.

And the value of the properties?---The portfolio is valued in excess of a billion dollars.

I think you may have said this. How many leases altogether, leases of licences are there?---There are in excess of 800.

40 THE COMMISSIONER: Now, Mr Harvey's role as I read paragraph 7 was the day to day management of every one of them?---Of the 800 leases and licences.

Yes?---Correct.

MR STEVENSON: And in terms of revenue from those leases and licences is, are there any observations you can make about that?---The revenue from those leases and licences approximates \$10 million a year.

THE COMMISSIONER: Yes, thank you, Mr Inberg.

MR McILWAINE: Commissioner, I have a question. Mr Inberg, my name is McIlwaine and I represent Mr Harvey. You said in your evidence today, I'll go back a step. Your evidence is that you never observed Mr Harvey speaking to Mr Makucha in the foyer of either Sydney Water buildings. Is that correct?---Yes, it is.

10 Your evidence today was that you indicated to Mr Harvey that he was not to meet Mr Makucha in the foyer?---Correct.

You also gave some evidence, you gave a direction - - -

THE COMMISSIONER: Sorry, just a moment, Mr McIlwaine. I think that's the effect of Mr Inberg's evidence but I don't recall Mr Inberg saying that he gave Mr Harvey a direct instruction that he should not meet Mr Makucha in the foyer.

20 MR McILWAINE: My note is, there's two pieces of evidence, your Honour, Commissioner, I go to that. One is he directed or told him not to meet him in the foyer and then also gave him a direction to meet him in a meeting room with a third person. I just want to clarify that.

THE COMMISSIONER: I just would like to understand that. I'm not sure if Mr Inberg understood that that was the import of the question that you were putting to him.

MR McILWAINE: That's what I want to clarify.

30 THE COMMISSIONER: Do you understand what we're talking about, Mr Inberg?---Yes, I do.

MR McILWAINE: You subsequently, as I've just said you gave evidence that you gave a direction to Mr Harvey that he was to meet Mr Makucha in a meeting room with a third person present?---I definitely recall saying to Mr Harvey that he was not to meet Mr Makucha alone. I can't recall whether it's specific to the foyer.

40 That was my interest?---I'm sorry.

So it's wrong, would be wrong to suggest that at any stage you gave him a direction not to meet Mr Makucha in the foyer? You gave him other directions but not that specific direction?---I can't recall whether it was to the foyer or to meeting rooms or any other location but I certainly - - -

THE COMMISSIONER: I thought you said that you had to meet him, he had to meet him WSC's offices or is that not right?---That's, no, that's correct.

MR McILWAINE: And there was no reason to use the word foyer to Mr Harvey. Is that correct?---Sorry?

Well, had you ever seen Mr, you'd never seen Mr Harvey meet Mr Makucha in the foyer. Correct?---No, no, I haven't.

Had you observed Mr Harvey meet other people in the foyer?---I can't recall. Certainly Mr Harvey and I occasionally had a coffee in the foyer but we didn't meet with anybody.

10

But there was no specific prohibition, sorry, there was no prohibition either specific to Mr Makucha or general to Mr Harvey about meeting people in the foyer. Is that correct?---General prohibition, no, I don't think so.

And the foyer areas that we're talking about both at Bathurst Street and Smith Street they were public areas where members of Sydney Water would pass through them from time to time and see people who were sitting in the foyer. Is that correct?---Yes, it is.

20 Thank you, nothing further, Commissioner.

THE COMMISSIONER: Mr Gordon.

MR GORDON: Mr Inberg, I appear on behalf of Mr Makucha. Help me with this if you'd be so kind. When did you first met Mr Harvey?  
---Would've been the first interview with Mr Harvey in the recruitment process.

30 And were you in part interviewing him for the position?---Yes, I was. I wasn't the only interviewer.

But you were part of the interviewing process?---Yes, I was.

And were you asked to express a view as to the suitability of the position?  
---Yes, I was.

And did you express a view?---Yes, I did.

40 What was that view?---He came across as a very competent and knowledgeable person.

So did he impress you as being a senior and knowledgeable person?---(NO AUDIBLE REPLY)

Was it restricted in your assessment to real estate property or was the interview more wide ranging than that?---I remember being, noting his experience with regards to planning matters and particularly his experience with the Department of Planning.

Did you enter into the area of trademarks at all?---No, I did not.

You'd agree with me would you that the word property asset or those two words are wide enough to include all types of property?---In the context of the recruitment and in my context I would only refer to it in terms of real estate.

10 Do you agree it would be in general terms would you that property could include intellectual property?---Yes, I believe so.

And that when one talks about a property asset manager intellectual property could be regarded as an asset?---Not, not in the context of Sydney Water.

Was Sydney Water an organisation that retained within its ranks who dealt with trademarks?---I believe so.

20 Do you know who those people were?---They work up in the Finance department.

Can you tell us by name who they were please?---No, I can't.

Did you ever have any discussions with the people who dealt with trademarks in Sydney Water?---No, I didn't.

Do you know whether Mr Harvey did?---No, I'm not aware of it.

30 Did Mr Harvey ever say to you anything to the effect that he was interested in trademarks either generally or specifically?---No, I certainly can't recall.

You can't recall that?---I, I don't believe he ever mentioned anything of that nature to me.

I'd like you please to go for a moment to, have you still got the bundle there, the folder?---Yes, I have.

THE COMMISSIONER: Which folder?

40 MR GORDON: This is folder 2, Commissioner. And would you go once again to page 738 which is the, I think, email from the lady Kyera Wilson to you?---Yes.

That's dated 12 November, 2008 I think. Is that right?---Yes, it is.

Just read that to yourself for a moment if you'd be so kind?---Yes.

Quite plainly this was Mr Makucha making contact or providing the contact to you?---Yes.

And he was drawing your attention to a problem in his mind that existed?  
---Possibly.

Well, he was drawing your attention to the fact that there was a conflict between what you were saying on the one hand or the influence you were bringing to bear on the one hand and what Mr Harvey was saying to him on the other. That must be right mustn't it?---I, after reading it I can see why you could say that.

10

Well, it's plain on the basis of the words there printed is it not?---Yes.

And you read that when it was given to you to read I presume?---Yes.

And it drew your attention to the fact and the attention was drawn by Mr Makucha to the fact that there was a conflict in the resolution of a matter with Sydney Water?---Yes.

20

And what he was complaining to you about as the senior officer senior to Mr Harvey was that when in his dealings with Mr Harvey Mr Harvey says one thing you said something opposite?---Yes.

And I want to stress this. You agree with me that it was Mr Makucha who drew your attention to that potential problem?---Well, certainly that's what he indicated here to Kyera Wilson, yes.

And you were told that you were causing upset to Mr Makucha, he didn't like it?---Mr Makucha didn't like it?

30

Yes?---Yes.

And earlier on in your evidence you referred to that being something to do with a scheme of dealing with Mr Makucha, getting under his skin I think was your term?---Yes.

Well, was that part of the programme, that Mr Harvey said one thing and you said another and Mr Makucha was left with diametrically opposed views?---No.

40

That was no part of the scheme, was it?---There was no scheme, if you, there was no scheme in relation to whether Ed and I or Mr Harvey and I were playing good cop bad cop if that's what you're referring to.

Yes, no such scheme existed?---No.

So the only possible interpretation of those words was that Harvey was saying one thing and it was opposite to what you were saying and causing Mr Harvey then to do?---I, I can understand why you could say that.

Well, is there some other explanation please?---I, I, I can only refer to the fact that I took it as that we were getting under Mr Makucha's skin and that we were hopefully getting him to a point where he would, putting pressure on him to remove himself and his chattels from the site.

By, by having contrary statements made by Mr Harvey, one thing one day and a 180 degree about turn the next?---Yeah, I had, that's certainly not how I took at the time.

10

Was that the way you did it?---It's not how I took it at the time.

But that sort of behaviour is not what Sydney Water normally does in negotiations, is it?---No.

So then you have cause to be concerned even on that basis?---Yes, but I didn't - - -

You say yes, what did you do about it?---I, I - - -

20

MR PAYNE: He's trying to answer?---I didn't believe and, that Mr Harvey was saying anything contrary to what I was directing him to do.

MR GORDON: Well, it's perfectly plain from the words here that he was? ---Yes, I understood that.

MR STEVENSON: Well, I object to that, I object to that, it's not, it doesn't follow at all.

30

THE COMMISSIONER: No, it doesn't follow at that by Mr Inberg has said yes.

MR GORDON: (not transcribable)

MR STEVENSON: That's not fair, Commissioner, with respect. Mr Gordon's probably - - -

THE COMMISSIONER: I accept that, I accept that Mr Stevenson. Mr Gordon, the, I do not regard the question as being fair - - -

40

MR GORDON: I will withdraw the question.

THE COMMISSIONER: - - - and I, I don't attach any value to Mr Inberg's agreement with.

MR GORDON: I will go about in another way, Commissioner. Did you when you saw this make inquiry of Mr Harvey as to what was at that stage happening?---I certainly discussed the email with Mr Harvey at the time.

You were alerted then that this file was one with potential difficulties?  
---The file or the matter had, had difficulties with dealing with Mr Makucha for quite some time.

But did you then take any steps to monitor what was happening so that the 180 degree about turn ceased?

10 MR STEVENSON: I object to that. That assumes something which is neither admitted nor proved.

MR GORDON: I'll go about it this way, Commissioner.

THE COMMISSIONER: I do think that these issues have been canvassed, Mr Gordon, they concern matters that I asked Mr Inberg myself.

MR GORDON: Yes, Commissioner - - -

20 THE COMMISSIONER: But I mean I'm not stopping you if you put the question in a different form but I am just pointing out that this is material in respect of which Mr Inberg has given answers.

MR GORDON: I'll get to my next point. Mr Inberg, would you be so kind as to look at page 736 please. This is a letter, is it not, from Mr Harvey dated 29 October, 2008?---Yes, yes, it is.

So about two weeks prior to 12 November?---Yes.

30 Did you at any stage discuss that with Mr Harvey?

THE COMMISSIONER: Well, again, Mr Gordon, I've dealt, this has been dealt with and he's given replies to this.

MR GORDON: I'll move on.

40 THE COMMISSIONER: The effect of Mr Inberg's evidence is that he settled this letter and it was written with his knowledge and consent. I mean, unless you want to put to him that it wasn't then there's no point in asking him that question again.

MR GORDON: I accept that, Commissioner and I would (not transcribable). In the course of your dealings in relation to Baxter Road with Mr Harvey did you at any stage discuss with him anything relating to trademarks?---No, I didn't.

Did there come a stage at any time prior to today when you were aware of an issue concerning trademarks?---No, I wasn't.

Not, not even prior to today?---The only time, the first time I heard about the issue with trademarks was February of this year.

February of this year?---Yes.

And who brought your attention to the trademarks?---The head of internal audit.

10 And very briefly can you tell me please what was brought to your attention?  
---When I heard or Mr Harvey or indicated or explained to me what he'd been doing my first action was to call Jonathon Sesel who was the head of internal audit. I did so. As I understand it Mr Harvey handed over a number of files to Mr Sesel and Mr Sesel after examining those files I understand advised me there was issues or a number of things in it including using the Sydney Water trademark.

Did you at any stage examine the documents relating to that trademark?  
---No, I didn't.

20 Yes, that's all I ask you, thank you, Commissioner.

MR STEVENSON: Commissioner, may I ask one more - - -

THE COMMISSIONER: Yes.

MR STEVENSON: - - - question which I forgot to ask before, Can you tell the Commissioner this, in your day to day dealings with Mr Harvey how did you find him so far as concerns his competence and diligence?---Mr Harvey always presented, presented as a very competent and knowledgeable person.  
30 He was very much, he was competent in, in government procurement guidelines. He, he had, had completed while he was at Sydney Water courses in contracts management, senior contracts management, he was, presented that he was pedantic I must admit and he was very particular to the detail of what he was dealing with.

Did he have any particular knowledge or experience that you thought to be of value to the corporation?---His planning knowledge was, was very useful on a number of occasions with, for, for us.

40 Thank you, Commissioner.

THE COMMISSIONER: Did you notice any personality change in Mr Harvey while he was working?---No, I, I, Commissioner, on 27 January when he indicated to me that he needed to meet me and tell me what was going on I at first thought he was going to tell me that he had something medically wrong with him. I was very, he seemed to be very stressed at the time.

And before then did you notice any signs of stress on his part?---No, I didn't.

No change in his work methods?---Not that I noticed.

Yes, thank you. You may be excused, Mr Inberg.

**THE WITNESS EXCUSED**

**[12.09pm]**

10

MR PAYNE: Commissioner, I call Ms Valentine.

MR STEVENSON: I seek leave to appear for Ms Valentine and - - -

THE COMMISSIONER: Yes.

MR STEVENSON: - - - no section 38 order is required, Commissioner.

20 THE COMMISSIONER: Good. Ms Valentine, won't you take a seat please. Do you wish to give your evidence under oath or to affirm the truth of your evidence?

MS VALENTINE: The truth.

THE COMMISSIONER: Affirm the truth.

<CHRISTINE PAUL VALENTINE, affirmed

[12.09pm]

MR PAYNE: Ms Valentine, what's your full name?---Christine Paula Valentine.

And your current position within Sydney Water?---Business process team leader, Purchasing and Contracts.

10 You've been in the position since April '09. Prior to that you were a business process team leader - - -?---Accounts payable.

So broadly speaking a senior officer within the accounts department of Sydney Water?---Correct.

And you have been within the accounts department of Sydney Water in a reasonably senior position for how long?---20 months.

20 20 months. And you've made a statement in this matter?---I did.

Can I show you a document? You've had an opportunity to consider that statement in recent times?---Yes.

Are there any matters you wish to correct contained in the statement?---No.

Do you tell the Commissioner that the contents of the statement are true and correct to the best of your knowledge and belief?---I do.

30 Commissioner, I tender the statement.

THE COMMISSIONER: Yes. The statement of Ms Valentine is Exhibit P167.

#### **#EXHIBIT P167 - STATEMENT OF MS VALENTINE**

40 MR PAYNE: Can I just ask you a few matters in amplification of that statement first, Ms Valentine. And just to orient you I'm then going to ask you some questions about recent or planned changes within the accounts department within Sydney Water, highlighted by some of the issues, I think that you first picked up in relation to this matter. First of all can I take you to paragraph 8. In the ordinary course, I think you are familiar with all 21 invoices submitted by Mr Harvey in relation to either Mr Makucha and his companies or Hall Chadwick in this matter?---Yes.

And you've had an opportunity to consider those?---Yes.

And in relation to each, the system was that Mr Harvey would place a stamp on the invoice, affix his signature to that stamp?---That's correct.

And would fill in various financial information about an account the payment was to be made from and other indications to the accounts payable department of what payment it was?---Yes.

10 That invoice would be scanned and electronically submitted to accounts payable?---There are two types of invoices. Some of them were scanned, yes.

And in relation to the others they were hand delivered were they?---Yes.

And in, on each occasion they would be examined by staff working for you at the time?---Yes.

And they system within Sydney Water would then create once the cheques were done, would create a purchase order?---Correct.

20 And at some point you would for some of the invoices, not all of them at the time, you would conduct the administrative actions that you described in paragraph 8 of your statement?---Yes.

And broadly speaking you'd check that the service being invoiced is a professional service or consultancy on the face of the invoice?---Yes.

And you check the vendor details and in particular the signature of the person within Sydney Water who had authorised payment?---Yes.

30 And your, your approval would then be signified on the document?---Yes.

How would you do that? By manually or electronically?---In all cases the information is entered into the system electronically. So my authorisation is authorisation of the invoice conforming to the protocol.

And the system we're talking about is the financial management information system - - -?---That's correct.

40 - - - conducted by Sydney Water?---Yes.

And so your approval would be entered electronically?---Yes.

And in the case of the first 20 of the 21 invoices you've examined in relation to Mr Makucha and Hall Chadwick, payment was then authorised and made by Sydney Water in respect of those invoices?---Yes.

And it was only in relation to the 21<sup>st</sup> invoice for \$100,000, crossed out with \$50,000 written on it that payment was not made?---Yes.

And I'll take you to an email in a moment, but that was the one that you were shown and you were altered to a number of difficulties with the earlier invoices?---Yes.

10 Can I just then ask you about paragraph 19 and that's addressing the subject of this last invoice, which you'll find in your statement (not transcribable) annexures there are, it's P36 in the top right hand corner is the invoice that we're talking about. I'm terribly sorry, it's not P36, it's annexure K?---Yes, I have it. Commissioner, do you have that? It's got page 36 in the bottom right hand corner.

THE COMMISSIONER: Yes.

MR PAYNE: That's the invoice that we're talking about in paragraph 19. Can I just ask you some things about it?---Sure.

20 It's from a Paul Makucha, but appears to have no indication that this is a tax invoice?---Correct.

In the ordinary course of Sydney Water, it is registered for goods and services tax purposes?---Yes.

And in the ordinary course, unless the, it was the type of invoice where there was a recipient generated invoice, you'd expect to see tax invoice on any invoice which Sydney Water was being asked to pay?---Yes.

30 There would be an Australian Business Number in respect of the invoice, again for GST purposes?---Yes.

Next, did you notice about a document that annexure K that although from Paul Makucha, you were being asked to arrange electronic transfer of a sum to a company, Mascot Administration Services Pty Limited?---Yes.

And that was against Sydney Water's internal policies for the payment of invoices, namely that you just sign the payment?---That's correct.

40 Can I ask you just about the invoice. Paragraph 1 says, further to agreement with E Harvey, whose job was it within Sydney Water to check that agreement and whether this invoice fell within its terms?

THE COMMISSIONER: I'm not sure if that, can you just put that question again, Mr Payne?

MR PAYNE: Yes.

THE COMMISSIONER: I'm not sure, because I'm certainly not sure what was meant by whether the invoice fell within its terms means?

MR PAYNE: I accept that criticism, Commissioner. I'll ask another question. Point 1 of this invoice says, further to agreement with Mr E Harvey?---Yes.

Would you or anybody acting within the finance department of Sydney Water have occasion to consider the terms of any such agreement?---No.

10 No. So in authorising or signifying your approval in relation to an invoice, there was no system as least within the finance department to try and reconcile the invoice with any agreement referred to in the invoice?

THE COMMISSIONER: Did you understand the question?---Could you repeat it again, please?

Well, let me try and explain it to you?---Thank you.

20 If you've got, if you've got an agreement to construct a wall and you're (not transcribable) and an invoices arrives and it says pursuant to agreement number so and so and the agreement is for the supply of tiles. Is there any mechanism in your accounts department to check whether the tiles were in accordance with the agreement?---No.

MR PAYNE: As you understand it, it is the responsibility to check, taking the Commissioner's example, you know tiles as against a wall, where does the responsibly fall in Sydney Water to check that matter?---With the person who has the delegated authority to sign the invoice.

30 So in this case Mr Harvey has signed it?---Yes.

And part of his signature, so when he writes in the description of annexure K, for example, real estate advice in relation to Outdoor Advertising, so far as accounts is concerned, you take that on face value that this agreement has got something to do with real estate advice in relation to Outdoor Advertising?---Yes.

I see. Is it usual for invoices, for sums of money to be crossed out by hand and - - -?---No.

40 Okay. Do you ever see it within Sydney Water?---Well, in some cases, yes. Some instances people may, on contract for example, choose, choose the, because of the work done, to only pay a portion of an invoice, in which case there, the amount would be crossed out and the amount agreed to inserted in conjunction with the contract, yes.

And would you raise a query with the person who had authorised payment in those circumstances?---No.

Can I ask you then to turn to annexure L in your statement, which is the email that you sent Mr Harvey after your examination of that invoice, namely annexure K, and I think you conducted an investigation into the earlier 20 invoices or the earlier, yes, the earlier 20 invoices which had been paid by Sydney Water to check those at that time?---May I just make a statement that I wasn't aware of the Hall Chadwick relationship until later, so- - -

10 I see. So just the Makucha invoices?---And we only checked Makucha invoices, yes.

And you checked those prior to sending this with this email to Mr Harvey?  
---Yes.

And you subsequently became aware of the Hall Chadwick invoices and the fact that they'd been submitted by Mr Harvey and paid by Sydney Water?  
---At a later date, yes.

20 At a later date. Yes. Thank you. So this is on 21 January, 2010. Can I just take you through the matters that you've raised with Mr Harvey. You've noted 7 previous purchase orders created for this service. By this service you were talking about the outdoor advertising matter- - -?---Yes.

- - -referred to in the invoice? And you've provided 7 separate approvals for individual invoices. That was as you understood it a practice described as order splitting?---Yes.

30 And contrary to both Sydney Water policy and to Mr Harvey's delegation?  
---Yes.

Professional service engagements, as you point out, are deemed contracts for Sydney Water so that if a total engagement is of over \$50,000, as you point out, you must use a professional services contract shell?---Yes.

So far as your investigations either then or subsequently have revealed, there was no professional services contract shell ever used in relation to these services, was there?---Not to my knowledge.

40 And there's a formal contract number issued in your financial management information systems so there's a process, what, at the outset of entering the details of the contract into that system and a number is then allocated to that contract?---Yes.

No such number was ever allocation in relation to advertising, outdoor advertising here?---No.

And just dropping down to the next paragraph, you point out the original engagement of six months at \$18,000 per month in fact Mr Harvey had

submitted and, sorry, Mr Makucha had submitted, Mr Harvey had approved invoices for seven months of outdoor advertising services?---Yes.

And they'd been paid. And as you point out, that would seem to indicate just on the face of the documents a further agreement, at present the value of the engagement, including exclusivity fees is that sum there of about \$239,000, you point out?---Yes.

10 And dropping down, you apologise to Mr Harvey for not picking up the order splitting until that day and for the investigation you point out the matters, you've agreed with me, in accordance with Sydney Water policies, there should have been tax invoice on each of the invoices and- - -?  
---Yes.

- - -at least with the Makucha invoices, that wasn't the case?---Yes.

You now know the Hall Chadwick invoices at least were called tax invoice and had an ABN?---Yes.

20 And there should be an ABN and again there wasn't on the Makucha invoices. You then make the point about it being against Sydney Water policy to assign payment from Paul Makucha to this company as apparently had taken place?---Correct.

And you asked for further information from Mr Harvey?---Yes.

30 And as you understand it, your picking up the matter was the essential catalyst for Mr Harvey coming to Mr Inberg and his involvement and Mr Makucha being involved and this inquiry?---Yes.

As a result of things that you picked up here, which had gone on in relation to these invoices, various changes have been suggested within Sydney Water and the way that it deals with invoices of this kind?---Correct.

Designed you could say to try and eliminate the possibility of this happening in the future. And I'll take you through a few of them. There's a suspicious transaction testing facility being introduced to the financial management information system?---Yes.

40 Broadly speaking, that's thought to start later this year. How does it work?  
---There's a, Price Waterhouse Coopers designed or created a script to check various pieces of information on invoices, purchase orders, dollar amounts, for collating that information into various ways of reviewing the information to determine if there was anything suspicious about those transactions.

And a number of the things that you saw in these Paul Makucha invoices would be red flags in that suspicious transactions testing, would they?

---Yes.

So for example the assignment, the absence of ABN- - -?---Yes, oh, yeah.

10 - - -would all be matters that would now be picked up in this suspicious transactions testing report?---We have also conducted a review of all the vendors in our database and reviewed every vendor which doesn't have a current ABN and for those who we weren't able to obtain an ABN, we've inactivated and for those that were, we've included that ABN into the vendor file. So additional to the suspicious transactions report we have already taken action.

So I think as you pointed out and when you apologised to Mr Harvey having picked this up, you accept that these invoices getting through without an ABN was a weakness in the financial management system- - -?---Yes.

- - -at that time, but you tell the Commissioner that that's been rectified since?---Yes.

20 And so that if any of these Paul Makucha invoices were presented today, if for no other reason, the absence of the ABN would result in their being sent back to Mr Harvey, would they?---If they were presented to the accounts payable department?

Yes, I'm sorry, yes?---Yes.

30 Yes?---There is a, well, there is also an automatic match between the scanning facility and the vendor which correlates the ABN on the invoice to the ABN on the vendor, so it would automatically flag.

And is this picked up as part of your suspicious transaction testing or is this part of a broader business intelligence system which has been developed? ---It's part of the broader business intelligence.

And that broader business intelligence system now seeks to match the vendor, the purchase amount, the purchase approval, the date of purchase and the purchase description?---Yes.

40 And to bring it together so as to eliminate order splitting. Is that- - -? ---That's, yes.

- - -one of its principal purposes?---Yes.

And that system has started in April this year, has it?---I'm sorry, I don't recall the date.

But recently?---Yes.

It's now in place?---After- - -

After, after these events?---After the- - -

And prior to you sitting in the witness box today, it started?---Yes, yes.

10 There have been external reviews by PWC that you mentioned. Are they ongoing within the accounts payable department to pick up further areas of improvement?---Well, we're working through the recommendations that PWC made to us and we have a project team with, involving me, a colleague, my manager and the, each person within the procure to pay team has specific roles in which they've been encouraged to determine and, determine if we're working to best practice and to adhere to the guidelines given to us by PWC.

And there's been additional training of all staff within the accounts payable department based on that PWC work?---Yes.

20 And that's ongoing?---It is.

And there are now monthly operating reports prepared within the accounts payable area which include amongst other things information about these suspicious transactions so that it comes immediately to light?---Yes.

I have nothing further for Ms Valentine, Commissioner.

THE COMMISSIONER: Yes. Mr Gordon.

30 MR GORDON: Thank you. Ms Valentine, help me if you will. How long have you been employed altogether with Sydney Water please?  
---I commenced employment in February 2009.

That was when you were starting employment?---Sorry, January, yes, 2009.

You say in paragraph 8 of your statement that you, when you're dealing with an invoice you check that the person authorising payment has delegated authority to do so. See that?---Yes.

40 You go on to say, "My approval is to ensure that these and other administrative actions have been properly completed." Correct?---Correct.

So that seems to suggest that you have some knowledge in each invoice, in the case of each invoice of the delegated authority of the individual approving the invoice. Is that right?---Yes.

Can I take you now to annexure A to your statement. This is the first of a number of invoices which are headed Hall Chadwick. Do you see that?  
---Correct.

And the first of these, and if I go wrong you please put me right, okay?  
---Certainly.

There's an invoice dated 31 March, 2009?---Ah hmm.

And there are a number of stamps on there, one is a small stamp about the centre of the page Property Asset Manager position 28944. Do you see that?---28944?

10 In a small rectangular box about the middle of the page to the right of a larger box?---Yes, yes, I can see that.

It says Property Asset Manager position 28944. Did you recognise that number?---I don't recognise that number.

Is that the position indicating a delegated power or authority?---In the delegations manual it's referred to by role, by the name of the role so when I check the delegations manual I check Property Asset Manager.

20 So you checked and you knew that it was the position occupied by Mr Harvey?---Correct.

And you knew Mr Harvey did you personally?---No.

Had you met him?---I have never met him.

But you knew his description was Property Asset Manager?---Yes, and I'm able to check that on the intranet so by the signature I would check the intranet to locate Mr Ed Harvey and then attached to that is a description of his position and I would match the two together.  
30

And when you checked that did it give you any description of the range of matters that fall within the authority of the Property Asset Manager to approve?---There's a variety, well, there's a couple of areas so the Property Asset Manager could have delegation in an area of the delegations manual which refers to professional services and consultancies and also delegation to approve regular goods and services.

But when you read the document, I assume you did read that document before you approved it for payment?---I would check the document, yes.  
40

So you would've been aware at the time that that was a fee amount, if you look at the document you'll see fee amount, fees covering professional services on account of advice for Paul Makucha and Sydney Water Corporation?---Yes.

And nothing struck you as being untoward about that?---No.

And if we go over the page to the next of the invoices 8 April, 2000, 2009 I'm sorry, again the same Property Asset Manager stamp and this time the fee amount is the fees covering professional services on account of accounting and taxation returns for the Makucha Group of Companies. And you saw nothing untoward about that?---No.

10 THE COMMISSIONER: What checks would you make in regard to that? I mean what would you be looking at?---I'm, I'm checking that Ed Harvey has the authority to approve the invoice based on his role and the delegations manual and specifically for professional services and consultancies.

And professional services and consultancies in relation to particular services or generally?---Any, any professional service or consultancy if it's less than \$50,000.

20 That was the extent of his authority?---That's the, if the total value of the engagement is less than \$50,000 then a purchase order can be created and that's the responsibility of the people who fall under my management and if it's over \$50,000 the contract has to (not transcribable).

I understand. What I'm really asking you concerns the words "on account of accounting and taxation."?---No, for me the, the, the fact that Ed Harvey has signed it, that the value of the invoice is less than \$50,000 and it falls within his delegation so I'm - - -

30 So you're not interested in the description of the services rendered for which fees are being charged?---No, only insofar as it relates to being a professional service.

Because he has authority to approve fees under \$50,000 for professional services of whatever kind?---Yes.

40 MR GORDON: And the fact that that invoice refers to accounting and taxation returns for not Sydney Water but for the Makucha Group of Companies didn't strike you at all?---In my role it's not relevant to question the information within the invoice only as it pertains to a professional fee. So if it's, if it's a professional service then Ed Harvey has delegation to approve that invoice.

Even though there's nothing in that invoice to suggest that there was any service given to Sydney Water?---Even so.

And that if we go through these invoices seriatim, one after the other that would be the same answer you'd give me all the way through is it?  
---Correct.

For example if I can take you to annexure B. The first of those is again a Hall Chadwick invoice which is for an amount said to be for fees covering professional services on account of registration of the new entities as required in the corporate structure diagram and legal advice.

THE COMMISSIONER: I don't see that, Mr Gordon, can you just please explain where that is? You're talking about annexure B page 11 or another page?

10 MR GORDON: In my bundle, Commissioner, it's the first page of annexure B.

THE COMMISSIONER: And where is it?

MR GORDON: Page 11.

20 THE COMMISSIONER: Sorry, yes, page 11, yes. So it's, Ms Valentine, do you see the description above the total of \$1,925 there's a fee for \$1,750 and then you can read what the fees are for for which \$1,750 has been charged. Do you see that?---Yes, I can.

MR GORDON: And it was, as far you were concerned, within the powers of Mr Harvey to approve registration of new entities such as that?

THE COMMISSIONER: No, no, that's, that's not what he said at all, Mr Gordon.

30 MR GORDON: No, I'll rephrase it. As far as your understanding went you were happy to authorise that were you?

THE COMMISSIONER: Authorise what?

MR GORDON: Authorise payment of this invoice?---In actual fact I'm not authorising payment of the invoice.

What are you doing?---I'm, I'm, my role is to, to authorise the, that the correct delegation is being used.

40 THE COMMISSIONER: To verify?---Thank you, to verify that the correct delegation is being used, the person has the correct delegation and that it is a professional service or a consultancy.

Falling within the delegated authority?---Correct, thank you.

And if you go to the next document, the invoice dated 25 May, do you see in there the, the invoice (not transcribable) fees covering professional services for registration of Sydney Water Health Pty Limited?---Yes, I do.

And did you read that?---I did.

And did you understand that to be the registration of a company?---Yes.

And that didn't cause you any concern?---No.

And if you go to the next one, the invoice of - - -

10 THE COMMISSIONER: Excuse me, Mr Gordon, it didn't cause you any concern, I assume from your evidence the reason for that is that it wasn't part of your job to think about that?---Correct.

MR GORDON: Thank you, Commissioner. If you go to the next one which is 28 May, 2009, final instalment and disbursements and there it sets out a number of companies, doesn't it, the registration of the three utilities, Sydney Water M Pty Limited, Sydney Water P Pty Limited, Sydney Water L Pty Limited as required in the corporate structure diagram and letter of advice. Did you read that?---I did.

20 Do you recall reading that?---Yes.

At the time did it not seem strange to you that such companies were being formed under the authority of a property manager?---No.

Did it seem like some exciting development was afoot?---I, I can't recall.

Do you recall discussing it or raising with somebody the possibility of new companies coming into existence for Sydney Water?---No.

30 Did you ever go to the delegated authority documents that you had access to, any of them, to ascertain whether the property asset manager was authorised under those document to deal with these issues, the formation of companies and the like?---No.

That's all I ask, Commissioner.

THE COMMISSIONER: Yes. You don't have any questions, Mr McIlwaine?

40 MR McILWAINE: No, Commissioner.

THE COMMISSIONER: Mr Stevenson.

MR STEVENSON: Ms Valentine, as you know I'm the barrister for Sydney Water. Mr Gordon was asking you questions - - -

THE COMMISSIONER: You're also her barrister.

MR STEVENSON: What's that?

THE COMMISSIONER: You're also her barrister.

MR STEVENSON: Indeed, I'm appearing for you as well?---Yes, he is, thank you, Commissioner.

10 Thank you, Commissioner. I need reminding of these things from time to time. Mr Gordon asked you questions about invoices and he asked on quite a few occasions did you read it - - ?---Yes.

- - - and you said yes. Now, giving the answer yes were you going to refer to having read the invoice in your process of review as you describe in your affidavit or were you also meaning to convey you read the invoices at the time that they came into the accounts department throughout 2009?---The former.

20 Right. So you don't have a recollection, do you, of reading any of those invoices as they came in throughout 2009?---No.

And would it in the normal course be part of your process to actually read the invoices as they came in from day to day?---I, I do, usually, yes.

Right. When you were answering Mr Gordon's questions you meant to refer to having read them in the course of the analysis you did of what Mr Harvey had been up to after it was revealed in January of this year? ---Yes.

30 Now, Mr Harvey's overall delegation I think you've told us was for professional services \$100,000, was it, did you know that?---Yes.

And in respect of invoices for over \$50,000 there was a particular requirement that Mr Harvey had to go through, was there not?---Yes.

And as you know all of the invoices that you reviewed except the last one were for a figure of well under \$50,000?---Yes.

40 So to take for example the Outdoor Advertising invoices, they were all for \$18,000-odd?---Correct.

Now I want to ask you this questions, if any of those invoices had come into your department for more than \$50,000, what would, what procedure would have been followed and I mean under the old procedure before the changes that you've told Mr Payne about?---Those procedures remain the same. We, sorry, there is some difference. At the time we would have alerted the person to the fact that it was \$50,000, it was greater than \$50,000.

And the person you mean is Mr Harvey or - - -?---Yes, in this case Mr Harvey and that a contract should be, a contract shell should be provided

THE COMMISSIONER: I beg your pardon?---A contract shell.

Shell, what's that?---It's like a template that Sydney Water uses to contract with any supplier?

It's a form?---Yes.

10

MR STEVENSON: A form of contract, a standard form of contract, Commissioner?---Yes.

So first of all, is this right, payment would not be made - - -?---Yes.

- - - until these inquiries were undertaken?---Yeah, correct.

So you asked Mr Harvey to produce a form of contract in relation to, in this example, Outdoor Advertising?---Yes.

20

Yes, anything else?---He would have had to have obtained the appropriate delegation.

All right. Well, is there anything else beside the form of contract that you would have asked for?---Um - - -

A request for tender form?---Yes, those are the forms that we're required to set them up in FMIS, a request for tender form and a notification to award contract form.

30

And if you'd made an inquiry of Mr Harvey to produce those matters and he had not - - -?---Well, we would not have made payment.

Would anything else have happened?---Um - - -

That is, would you have told anyone about Mr Harvey having submitting an invoice for payment for over \$50,000 and then not being able to back it up with the documents?---Internal audit, well, I, in this instance I blind copied my email to internal audit and that would be the normal process.

40

So the procedure you followed in January you would have followed early had Mr Harvey submitted an invoice of more than \$50,000 on any occasion and not been able to back it up in response to your inquiries?---Yes, yeah.

Thanks, Ms Valentine.

THE COMMISSIONER: Yes, thank you, Ms Valentine. You may be excused?---Thank you.

**THE WITNESS EXCUSED**

**[12.48pm]**

THE COMMISSIONER: Mr Payne.

MR PAYNE: Commissioner, I have Mr De Rooy here, I was wondering with the pressures of time, I could finish him but it involves sitting on if that's not going to happen I'd ask him to come back on Tuesday.

10 THE COMMISSIONER: Yes. How long will we have to sit on?

MR PAYNE: Perhaps ten minutes.

THE COMMISSIONER: Yes, call Mr De Rooy.

MR PAYNE: Yes, I call Mr De Rooy. I should say for the benefit of those present Mr De Rooy's evidence has nothing whatever to do, he's the head of the maintenance department, he has nothing whatever to do with any matter concerning Mr Makucha and so Mr Gordon and Mr Makucha - - -

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THE COMMISSIONER: Yes. Mr De Rooy, did you, Mr Stevenson - - -

MR STEVENSON: I seek leave to appear for Mr De Rooy and Commissioner would you remind that I've done that if I forget later on and no section 38 order is required.

THE COMMISSIONER: Yes, I'm not prepared to assume that obligation, Mr Stevenson.

30 MR GORDON: Commissioner, may, would you prefer we wait while - - -

THE COMMISSIONER: No, you're free to leave whenever you wish, Mr Gordon.

MR GORDON: May I wait so I don't disrupt with the packing up of files?

THE COMMISSIONER: You can disrupt, you can do whatever you like.

MR GORDON: Yes, thank you, Commissioner.

40

THE COMMISSIONER: Now, Mr De Rooy, would you, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR DE ROOY: Under oath.

THE COMMISSIONER: Swear in Mr De Rooy in please.

MR PAYNE: Mr De Rooy, what's your full name?---Eric Ralph De Rooy.

And you are the head of the maintenance department within Sydney Water Corporation?---Yes, I'm the general manager of maintenance.

For how long have you occupied that position?---Since November, 2008.

10

You've made a statement in this matter containing a number of annexure contained in a folder. If I can show you that. You've had an opportunity to look at that. That's the statement you made in this matter dated 14 September, 2010?---Yes.

And there are a number of annexures behind tabs in that statement?  
---Correct.

20

Commissioner, do you tell the Commissioner that the matters contained in that statement are true and correct to the best of your knowledge and belief?---I do.

Commissioner, I tender the statement.

THE COMMISSIONER: Statement of Mr De Rooy is Annexure P168.

**#EXHIBIT P168 - STATEMENT OF MR DE ROOY**

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MR PAYNE: Mr De Rooy, I'll just ask you a few questions at a high level. And what I'll be concentrating on is steps either in train or for the future in relation to Sydney Water as a result of both matters which have emerged in this inquiry and to be fair to you, matters that you perceived when brought in as the general manager of maintenance some little time ago. First of all, as I understand it, your brief if you like in coming in as the general manager of maintenance was in part to address concerns which had emerged about long term problems within that department, if I can put it that way?---Yeah, in general terms, correct.

40

And as you say in paragraph 4, you've, you've got an extensive background in change management and have occupied senior roles in Sydney Water in the past dealing with issues of critical concern, for example, safety issues after the cryptosporidium outbreak some years ago?---Yes.

And you were brought in to fix up aspects of Sydney Water's management and practice there and you've brought into maintenance to try and do the same job there?---Yes.

Can I ask you about, and go straight to this question that arises directly here. I accept what you say, but I'm not going to ask you questions about potential problems you saw in contracting and so on within maintenance. That's, that's a matter where I think you had concerns that there were long standing relationships which potentially at least gave rise to corruption issues?---My main concern was that we were having some engagements and some contracts which were loose, which were open and weren't professionally managed. So of the risks then come to corruption, yes.

10

So a range of problems from general oversight and control through efficiency concerns and ultimately potential, potentially at least corruption concerns in that contract management?---Correct.

And that's something that you've taken steps to address and I'm not going to tax you about that today?---Yes.

I want to ask you about this question of the Civil Delivery section and inspectors, and in particular evidence which has emerged about, if I can put it this way, a long standing culture at least within Civil Delivery where the inspectors, to summarise it, are a bit of a law unto themselves. What steps do you have in mind to address this inspection role within Civil Delivery as a result of evidence which has emerged in this inquiry?---There's two parts to that. The first part is what we've already done and is in place now as an interim measure.

20

Yes?---And the second part is long term strategies for managing this type of work.

If you could address both. Firstly, what have you done to date as an interim measure?---As interim measures we've started rotating the Civil Delivery employees who undertake this inspection process. In some cases we send out two people to do the work. We've instituted a booking system where it must be booked through the work planning coordinator at each depot, rather than directly to the employee. So that the work planning coordinator has full control of the allocation of work. We have instigated vehicle logs so that each trip is recorded as to exactly where each inspection service (not transcribable). We have also undertaken fraud risk awareness and corruption prevention awareness training with all of the staff in the depots as well as specifically for the people undertaking this work as well.

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40

Some of the evidence which has emerged, Mr De Rooy of the inspectors seems that many of them have been in that position for a long time and effective supervision of them had effectively broken down. And in fairness to them, the managers were shocked when it emerged some of the evidence before this inquiry, but they described it as a position of trust. What steps do you have in mind for effective supervision of these inspectors in the future?---Okay. If we go then to the second thing, what we're doing long

term, we're creating a new unit which will be specifically allocated to this type of work. At the moment the people, the production employees are allocated from depots to the inspection tasks. In future there will be a team of around about 15 staff who would be allocated to this task. They will be managed separately from the depots. They will have their own manager and a field supervisor whose job will be to audit field performance associated with this work. They will no longer be production employees, they will be recruited and trained to be development inspectors for maintenance activities. So there will be a new position description and people will be recruited to that role.

And you have in mind that the job requirements will involve a greater rigour in terms of training prior to appointment then there's been the case in the past?---Correct.

And so they'll be rather than people who have been necessarily have come up through the ranks over a very long time, there will be a programme of external training as well of these inspectors?---Yes. The Urban Growth area will provide the structured training in the process. They will be trained in their responsibilities in terms of the application of CARs, Corrective Action Requests and skills and abilities to manage interaction with the water service coordinators and the constructors. There'll be a customer service focus in there where we have obligations to get things done on time as well as compliance aspects in terms of making sure what we receive as long term assets are both maintainable by maintenance and operable by our operations (not transcribable).

In terms of this new unit, will the head of that unit report directly to you?  
---It'll report to our Civil Delivery manager.

Who in turn reports to you?---Yes.

In terms of the relationship with Urban Growth, can I just test this idea with you and you tell me what's wrong with it. As an outsider of this process, some of the evidence which has emerged has suggested that Urban Growth is involved in the beginning and the end of the statutory functions of issuing the Section 73 notice. And at least in part, difficulties in the past have arisen, say in the case of Mr Buckley, where senior officers of Urban Growth have attempted to intervene in the particular CARs and have been told you do your job, I'll do mine. Will your new structure solve those sort of inter-departmental tensions if I can put it that way?---Yes. The intent is to, is to establish linkages between the various groups under what exists already, a service level agreement. But to formalise that in more detail as to how issues will be escalated, so if a CAR is issued we expect that it'll be assessed within the new maintenance team and then it will be under Urban Growth authority to be able to review those in terms of whether there is a concern with what the CAR is actually saying.

In terms of the applicants for this new unit, is there to be a rigorous selection process?---Yes.

And can you just describe briefly for the Commissioner what you envisage will be involved in selecting the new staff?---We would create a position description and a day later we would advertise it within Sydney Water and externally if needed. We would then ask for applications. We would then have a committee to review those applications and to select on merit.

- 10 And is it, is there some preference to be given for those who have conducted these inspections for Civil Delivery in the past or is it going to be a complete clean slate, going forward?---It would be a complete clean slate going forward.

- In terms of the external training you told me about, are there moves afoot to liaise with universities or Technical and Further Education institutions to provide such training?---In the instance of these inspection employees, no. It will be a matter of working through the Australian standards and the codes that apply to Sydney Water assets, it will be working through in terms of the e-Developer process and it will be working through in terms of behaviours and relationship management with the various players in the business.
- 20

And I think you said the urban growth senior management will have a role in developing and conducting the training that you have in mind for this new unit of production employees?---Correct.

- And are there steps on foot to deal with a new era of water industry competition introduced by the Water Industry Competition Act so far as this aspect of Sydney Water's business is concerned?---Look, there's an indirect link between the two issues. Some of the developers and water service coordinators would like to undertake more of the tasks such as chlorination and disinfection of mains and as part of what we are doing with our urban growth colleagues is to look at how we can open up that type of work for alternative service providers to do the work.
- 30

- Yes. Can I ask you about just a few of these documents in the annexures, because I was intrigued by them. Annexure 2 first of all, just if you can help me with that. As I understand it, what you've provided is a fraud risk assessment from each of the depots that report to you in the maintenance department?---From eight of the civil delivery depots, yes.
- 40

And those are the eight?---There is one other depot is still outstanding.

I see. Can we just look at the first page, which is about Cecil Hills depot at the moment and just help me with this. The first point, "SWC has a gifts and benefits policy in place which stipulates that there is zero tolerance of the acceptance of gifts from customers." And the effectiveness, it's written,

“Partially effective.” Is that a self-assessment from the depot?---It’s a rating that we use within the risk assessment methodology that we use. There are certain controls which are fully effective to move, to take away the risk or to reduce it from perhaps a high risk to a medium risk.

THE COMMISSIONER: It’s a description of the potential effectiveness of the measure that’s been taken?---Yes, Commissioner. And- - -

10 MR PAYNE: I’m in the unhappy position to be the one person that doesn’t understand that answer. Can you just help me with it? You’re talking about the employees accepting gifts or benefits. That’s the fraud risk we’re here addressing. Correct?---That’s a control.

That’s the control. I see. So the existing measures are partially effective. And that’s an assessment that you’ve made or the Cecil Hills depot has self-assessed?---The team at Cecil Hill in conjunction with our internal audit people, yes.

20 I see. This is then a report that they’ve made to you. And why is the Cecil Hills form in this way, and then if you turn in the document to Daceyville, which is a depot that we’ve heard some evidence about, in quite a different form? Because, have you got Daceyville there in front of you, which is the next? Mine at least are stapled. I hope you haven’t been given a special copy?---Yes, I have that in front of me.

Yeah. That seems to be in a quite different form to Cecil Hills. Is there a reason for that?---I have no idea as to why it’s specifically in a different format.

30 Okay. Just the second page, can I ask you about that. We’ve heard some evidence about stock, if I can put it that way, Sydney Water stock walking out the door and being used for private purposes rather than Sydney Water purposes. Are there steps that you’ve got in train to address that issue? ---Yes. We’ve implemented since maintenance division was created, an inventory control system which was not in place in the past. So this system now requires all the materials in the depot to be bar coded and to be scanned in and out. And that is effectively a control to ensure that all materials and fittings like valves are logged against jobs.

40 I see. So they’ll be bar coded in and out and you’ll need to swipe it and what, enter some sort of personal identifier before you’re allowed to leave the depot with Sydney Water property?---That’s right. They’re allocated to a truck which are allocated to employees.

I see. So there’s a team leader with the truck and that person will be then responsible for what that person takes to the job and he either brings it back and scans it back in or uses it in the job and it appears in your e-Developer systems as being used on the site of a job?---Yes, correct.

Just on Daceyville just before I leave it, the third-last page deals with a fraud risk of soliciting money or gifts to perform private work for a customer. I was asking you some questions about that, some evidence which has emerged before the Commission about not only using Sydney Water property but in effect evidence of private connections being conducted on the Sydney Water system and then money being paid to the e-Developer concerned rather than through the Sydney Water system in Sydney Water itself. Do you have steps that you have in mind to deal with this sort of behaviour?---Indeed. In terms of the allocation of work to people that do the e-Developer-type role, the work plan coordinator now controls their day in terms of hour by hour, so that we know where they are and what job they're on, and obviously if they're doing sideline work then we would know that they're not on the right job.

Is that the sort of tablet we heard about that Ms Hiddlestone introduced with the PIAS inspectors, is that the sort of computer system we're talking about? ---It's similar. Ours is very specifically called our FRM, our field resource management computers, Toughbooks.

I see. And so they're allocated what, per truck again?---Per employee.

And so each employee will have to enter where they are, what they're doing throughout the work day. Is that the - - -?---They'll be given jobs directly from the coordinator who will instruct them to be at each of the locations that they're required to be. They will then confirm they're there and confirm they leave.

So the workplace coordinator in each of the depot will become the sole controller of the e-Developer system of jobs that will - - -?---Correct.

I've used the personal pronoun "he" on a number of occasions, is there some process that you have in mind within Maintenance to address what appears to be a fairly strident gender imbalance?---That is a consideration we have in place, it's a very difficult problem. One of the issues is that over time our crews are in total reducing in number and it's difficult then to recruit new gender and racial balances if you like, people with those backgrounds to blend out the team. We do so where we can. For instance we now have a depot manager who's a woman and we have brought in a couple of other people to help us implement the new team for the developer services work in civil.

I think, just give me one moment. That's all I have for Mr De Rooy.

THE COMMISSIONER: Mr Stevenson?

MR STEVENSON: I have no questions.

THE COMMISSIONER: Mr De Rooy, I would like to commend Sydney Water for the rapid and detailed response to the problems that have been demonstrated by this inquiry?---Thank you.

You're excused from your summons, yes.

**THE WITNESS EXCUSED**

**[1.09pm]**

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THE COMMISSIONER: And we will recommence at 9.30 on Monday?

MR PAYNE: Thank you, Commissioner.

THE COMMISSIONER: Yes.

AT 1.09 THE MATTER WAS ADJOURNED ACCORDINGLY [1.09pm]